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No. 38] NEW DELHI, SEPTEMBER 14—SEPTEMBER 20, 2014, SATURDAY/BHADRA 23—BHADRA 29, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 11 सितम्बर, 2014

का.आ. 2483.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा 6 के खण्ड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, इस विभाग की 22 जुलाई, 2012 की समसंख्यक अधिसूचना का अधिक्रमण करते हुए सचिव/प्रधान सचिव, बिहार सरकार, शहरी विकास और आवास विभाग (उनके पदनाम से) को इस अधिसूचना की तारीख से 19 मार्च, 2015 तक की अवधि के लिए राष्ट्रीय आवास बैंक एन एच बी के निदेशक मंडल में निदेशक नामित करती है।

[फा. सं. 24/17/2010-आईएफ-II]

उदय भान सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 11th September, 2014

S.O. 2483.—In supersession of this Department's Notification of even number dated July 22, 2012 and in exercise of the powers conferred by clause (f) of Section 6 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby appoints Secretary/Principal Secretary to the Government of Bihar, Urban Development and Housing Department (by designation) to be Director on the Board of Directors of National Housing Bank (NHB) for a period up to March 19, 2015 with effect from the date of issue of this Notification.

[F. No. 24/17/2010-IF-II]

UDAI BHAN SINGH, Under Secy.

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2484.—भारतीय लघु उद्योग विकास बैंक अधिनियम, 1989 (1989 का 39) की धारा 6 की उप-धारा (1) के खण्ड (ड) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, एतद्वारा, मध्य प्रदेश वित्त निगम (एमपीएफसी) के प्रबंध निदेशक (एमडी) को अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेश होने तक, जो भी पहले हो, भारतीय लघु उद्योग विकास बैंक (सिडबी) के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक नियुक्त करती है।

[फा. सं. 24/5/2002-आईएफ-1 (खंड-IV)]

उदय भान सिंह, अवर सचिव

New Delhi, the 15th September, 2014

S.O. 2484.—In exercise of the powers conferred by clause (e) of sub-section (1) of Section 6 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), the Central Government, hereby appoints Managing Director (MD), Madhya Pradesh Financial Corporation (MPFC), as part time non-official Director on the Board of Small Industries Development Bank of India (SIDBI) for a period of 3 years or until further orders, whichever is earlier with effect from the date of issue of notification.

[F. No. 24/5/2002-IF-I (Vol. IV)]

UDAI BHAN SINGH, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 11 सितम्बर, 2014

का.आ. 2485.—अपराधिक प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार श्री के.पी. सिंह, अधिवक्ता को सीबीआई के अपराधिक मामला संख्या आर.सी. 1(स)/2013/सीबीआई, एस.सी.-I, नई दिल्ली (नन्हे यादव मर्डर मुकदमा), आर.सी. 2 व 4(स)/2013/सीबीआई, एस.सी.-1, नई दिल्ली (डीएसपी जियाउल हक मर्डर मुकदमा), आर.सी. 3(स)/2012/सीबीआई, एस.सी.-I, नई दिल्ली (सुरेश यादव मृत्यु मुकदमा) और इससे संबंधित व आनुषांगिक किसी अन्य मामले में विचारण के लिए जिला एवं सत्र न्यायालय, लखनऊ, विशेष न्यायिक दंडाधिकारी, लखनऊ एवं प्रधान न्यायिक दंडाधिकारी किशोर न्याय बोर्ड, लखनऊ के लिए विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/25/2014-ए.वी.डी.-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 11th September, 2014

S.O. 2485.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri K. P. Singh, Advocate as Special Public Prosecutor to conduct the trial of CBI cases (1) RC 1/2013/CBI/SIC-I/New Delhi, (2) RC 2 & 4(S)/2013/CBI/SIC-I/New Delhi, (3) RC 3(S)/2012/CBI/SIC-I/New Delhi, instituted by the Delhi Special Police Establishment (C.B.I.) in the District and Sessions Judge Court at Lucknow, Special Judicial Magistrate Court (CBI) and Principal Magistrate Juvenile Justice Board at Lucknow and appeals/revisions or other matters connected therewith and incidental thereto.

[F. No. 225/25/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 16 सितम्बर, 2014

का.आ. 2486.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए लखनऊ स्थित विचारण न्यायालयों में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थापित के.अ. ब्यूरो के एफआईसीएम मामलों (1) आरसी 220 2014 ई 0002, सीबीआई, ईओयू-VI, नई दिल्ली, (2) आरसी 21/2012, सीबीआई, ईओयू-VI, नई दिल्ली, (3) आरसी 09/2013, सीबीआई, ईओयू-VI, नई दिल्ली, (4) आरसी 09/2008, सीबीआई, ईओयू-VI, नई दिल्ली, तथा इससे संबद्ध अपीलों/पुनरीक्षणों या इससे संबंधित अथवा इसी संव्यवहार में उत्पन्न अन्य मामलों का संचालन के लिए श्री के.पी. सिंह, अधिवक्ता को विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/20/2014-ए.वी.डी.-II]

राजीव जैन, अवर सचिव

New Delhi, the 16th September, 2014

S.O. 2486.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri K. P. Singh, Advocate as Special Public Prosecutor to conduct CBI cases of FICN (1) RC 220 2014 E 0002, CBI, EOU-VI, New Delhi, (2) RC 21/2012, CBI, EOU-VI, New Delhi, (3) RC 09/2013, CBI, EOU-VI, New Delhi, (4) RC 09/2008, CBI, EOU-VI, New Delhi instituted by the Delhi Special Police Establishment (C.B.I.) in the Trial Court at Lucknow and appeals/revisions or other matters connected therewith and incidental thereto.

[F. No. 225/20/2014-AVD-II]

RAJIV JAIN, Under Secy.

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2487.—केन्द्रीय सरकार, सरकारी स्थल (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 30 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारत सरकार, मानव संसाधन विकास मंत्रालय की दिनांक 3 फरवरी, 2014 की अधिसूचना संख्या का.आ. 574 के अधिक्रमण में नीचे दी गई सारणी के स्तंभ (1) में वर्णित अधिकारी को, जो सरकार के राजपत्रित अधिकारी की पंक्ति के समतुल्य अधिकारी है, एतद्वारा उक्त अधिनियम के प्रयोजनार्थ संपदा अधिकारी नियुक्त करती है, और उक्त अधिकारी उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट सरकारी स्थानों के संबंध में अपने अधिकार क्षेत्र की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा या उसके तहत संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग और उन पर अधिरोपित कर्तव्यों का पालन करेगा :

सारणी

अधिकारी का पदनाम	सरकारी स्थानों के प्रवर्ग और अधिकारिता की स्थानीय सीमाएं
(1)	(2)
रजिस्ट्रार, भारतीय प्रौद्योगिकी संस्थान, रुड़की	भारतीय प्रौद्योगिकी संस्थान, रुड़की के, या उसके द्वारा या उसकी ओर से पट्टे पर लिए गए या अधिगृहीत स्थान और जो भारत संघ की भौगोलिक सीमाओं के भीतर कहीं भी हो, इसके प्रशासनिक नियंत्रण के तहत हो ।

[फा. सं. 7-22/2014-टीएस-1]

अनिल कुमार सिंह, अवर सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 15th September, 2014

S.O. 2487.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of the notification of the Government of India in the Ministry of Human Resource Development number S.O. 574, dated the 3rd February, 2004, the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being the officer equivalent to the rank of a Gazetted Officer of the Government, to be the estate officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on estate officer by or under the said Act within the local limits of his jurisdiction in respect of the public premises specified in column (2) of the said Table :

TABLE

Designation of the Officer	Categories of public premises and local limits of jurisdiction
(1)	(2)
Registrar, Indian Institute of Technology, Roorkee	Premises belonging to or taken on lease or requisitioned by, or on behalf of the Indian Institute of Technology, Roorkee, and which are under its administrative control, anywhere within the geographical limits of the Union of India.

[F.No. 7-22/2014-TS-I]

ANIL KUMAR SINGH, Under Secy.

कृषि मंत्रालय

(कृषि अनुसंधान एवं शिक्षा विभाग)

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2488.—केन्द्रीय सरकार कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राष्ट्रीय अनाज अनुसंधान केन्द्र, भा.कृ.अ.प., शोलापुर, को जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

[फा. सं. 13-10/2009-हिंदी/307]

विजय सिंह, अवर सचिव

MINISTRY OF AGRICULTURE

(Department of Agricultural Research and Education)

New Delhi, the 15th September, 2014

S.O. 2488.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the National Research Centre on Pomegranate, Solapur where more than 80% of staff have acquired the working knowledge of Hindi.

[F.No. 13-10/2009-Hindi/307]

VIJAY SINGH, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2489.—केन्द्रीय सरकार (संघ के शासकीय प्रयोजनों के लिए प्रयोग) राजभाषा नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों को जिसमें 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

1. क्षेत्रीय तसर अनुसंधान केंद्र, सीटीआर एंड टीआई, केंद्रीय रेशम बोर्ड, डाकघर-मंत्रीपुखरी, इम्फाल-795 002 (मणिपुर)
2. क्षेत्रीय रेशम उत्पादन अनुसंधान केंद्र, सीएसआर एंड टीआई, केंद्रीय रेशम बोर्ड, 7वां माइल, रेशमबाड़ी, कलिम्पोंग-734 301 जिला-दार्जिलिंग (पश्चिम बंगाल)
3. क्षेत्रीय तसर अनुसंधान केंद्र, सीटीआर एंड टीआई, केंद्रीय रेशम बोर्ड, द्वार सं. 7-1-4, एपीएसएफसी काम्पलेक्स, बालसमुन्द्रम हनमकोण्डा-506 001 जिला-वारंगल (आंध्र प्रदेश)

4. पी-4 तसर प्रजनन केंद्र (द्विप्रज), केंद्रीय तसर अनुसंधान एवं प्रशिक्षण संस्थान, केंद्रीय रेशम बोर्ड, अनुमंडल चिकित्सालय के सामने, मेन रोड, चक्रधरपुर-833 102 पश्चिम सिंहभूम (झारखंड)

[सं. ई. 11016/1/2011-हिंदी]

सुनयना तोमर, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 15th September, 2014

S.O. 2489.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules 1976, the Central Government, hereby notifies the following offices of the Ministry of Textiles, more than 80% staff whereof have acquired the working knowledge of Hindi :

1. Regional Tasar Research Station, CTR & TI, Central Silk Board, Post-Mantripukhri, Imphal-795 002 (Manipur)
2. Regional Sericultural Research Station, CSR & TI, Central Silk Board, 7th Mile, Reshambari, Kalimpong - 734 301 District- Darjeeling (W.B.)
3. Regional Tasar Research Station, CTR & TI, Central Silk Board, D.No. 7-1-4, APSFC Complex, Balasamudram, Hanamakonda-560 001 District- Warangal (A.P.)
4. P-4 Tasar Breeding Station (Bivoltine), Central Tasar Research and Training Institute, Central Silk Board, Opp. Sub-Divisional Hospital, Main Road, Chakrdharpur-833 102 West Singhbhum (Jharkhand)

[No. E. 11016/1/2011-Hindi]

SUNAINA TOMAR, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 सितम्बर, 2014

का.आ. 2490.—केन्द्र सरकार सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 की धारा 3 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा श्री रघुनाथ भट्टाचार्य, उप पंजीयक, राजीव गांधी पेट्रोलियम प्रौद्योगिकी संस्थान जैस, रायबरेली को तत्काल प्रभाव से उनके द्वारा संस्थान के उप पंजीयक के पद पर कार्य करते रहने अथवा अगले आदेश होने तक, इनमें जो भी पहले हो, संस्थान का पदेन संपदा अधिकारी नियुक्त करती है।

[फा. सं. जे-25021/4/2014-सामान्य]

पी. कल्याणसुन्दरम, संयुक्त सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th September, 2014

S.O. 2490.—In exercise of the powers conferred under Section 3 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Central Government hereby appoints Shri Raghunath Bhattacharya, Deputy Registrar, Rajiv Gandhi Institute of Petroleum Technology, Jais, Rae Bareilly as ex-officio Estate Officer of the Institute with immediate effect till he holds the post of Deputy Registrar of the Institute or until further orders, whichever is earlier.

[F.No.J-25021/4/2014-Gen.]

P. KALYANASUNDARAM, Jt. Secy.

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2491.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय के भारत के राजपत्र, तारीख 3.5.2014 प्रकाशित अधिसूचना संख्या का.आ. 1202(अ) तारीख 29.4.2014 प्रकाशित (हिन्दी भाग) में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

पृष्ठ संख्या 4, गांव “7. सिरुवालै” के स्थान पर “7. चेल्लनगौंडपट्टी” पढ़ा जाए।

[फा. सं. आर-25011/4/2014-ओआर-1]

पवन कुमार, अवर सचिव

New Delhi, the 15th September, 2014

S.O. 2491.—In exercise of the powers conferred under Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of Government of India in the Ministry of Petroleum and Natural Gas published in the Gazette of India No. 994 dated 30.5.2014, Part II, Section 3, sub-section (ii) vide S.O. No. 1202(E) dated 29.4.2014 at pages 17 to 19 namely :—

1. At page 19 in Village 7. Siruvalai, in column No. 1 (Name of the Village)

for ‘7. Siruvalai’ read. ‘7. Chellanagoundanpatti’

[F.No.R-25011/4/2014-OR-I]

PAWAN KUMAR, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 19 सितम्बर, 2014

का.आ. 2492.—केन्द्रीय सरकार सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र के भाग II, खंड 3, उप-खंड (ii), तारीख 6 अगस्त, 1994 में प्रकाशित, भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ.

1858, तारीख 24 जून, 1994, में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिनियम में क्रम संख्यांक 42 और इससे संबंधित प्रविष्टियों के पश्चात् निम्नलिखित क्रम संख्यांक और प्रविष्टियां अंतःस्थापित की जाएंगी, अर्थात् :—

अधिकारी का पदनाम	सरकारी स्थानों के प्रवर्ग
“43. महाप्रबंधक (प्रचालन), वेस्टर्न कोलफील्ड्स लिमिटेड, माजरी क्षेत्र (कुचाना), तहसील : भद्रावती, जिला : चन्द्रपुर, महाराष्ट्र।	महाप्रबंधक कार्यालय, माजरी क्षेत्र, कुचाना हाउसिंग कॉम्प्लेक्स और कुचाना के कवादी ग्राम का पुनर्वास स्थल”।

[फा. सं. 43022/7/2013-पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

पाद टिप्पण : मूल अधिसूचना, संख्यांक का.आ. 1858, तारीख 24 जून, 1994 द्वारा भारत के राजपत्र के भाग II, खंड 3, उप-खंड (ii), तारीख 6 अगस्त, 1994 में प्रकाशित की गई थी।

MINISTRY OF COAL

New Delhi, the 19th September, 2014

S.O. 2492.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendments to the notification of Government of India in the Ministry of Coal, published in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 6th August, 1994, vide number S.O. 1858, dated the 24th June, 1994, namely :—

In the said notification, after serial number 42 and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

Designation of the officer	Categories of Public Premises
“43. General Manager (Operation), Western Coalfields Limited, Majri Area (Kuchana), Tehsil : Bhadrawati, District : Chandrapur, Maharashtra	General Manager Office, Majri Area, Kuchana Housing Complex and Resettlement site of Kawadi Village at Kuchana”.

[F.No.43022/7/2013-PRW-I]

DOMINIC DUNG DUNG, Under Secy.

Note : The principal notification was published in the Gazette of India, Part II, Section 3, sub-section (ii), vide number S.O. 1858, dated the 24th June, 1994.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 75/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/384/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th September, 2014

S.O. 2493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/384/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

In the matter of a reference U/s. 10(1) (D) (2A) of I.D. Act, 1947.

Ref. No. 75 of 2005

Employers in relation to the management of Food Corporation of India, Patna

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer**Appearances :**

For the Employers : None

For the Workman : Sri D.K.Verma Advocate

State : Bihar

Industry : Food
Dated- 18-7-2014**AWARD**

By Order No.L-22012/384/2004-IR (CM-II), dated.22/08/2005, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Food Corporation of India in terminating the services of Shri Bhopal Tiwary instead of regularizing his service is legal and justified? If not, to what relief the workman is entitled?”

2. The case is received from the Ministry of Labour on 12.09.2005. After notice both parties appeared, the workman files their written statement on 03.02.2010. Thereafter the management files their written statement-cum-rejoinder on 08.07.2010. Two document of the workman marked as Ext. W-1 Series and W 2 Series.

3. The short point is involved in this case is the so called workman is entitled to regularization and ultimately to be reinstated in job of FCI management.

4. The case of the workman is that he was engaged as casual workman from June 1996 to 2003 and in support of his claim he has filed the photocopy of attendance register with seal of depot. Incharge, which is marked as Ext. W-1 Series.

5. The workman files the unchallenged affidavit evidence and circular of FCI management to regularize daily wagger marked as Ext. W-2 series.

6. On the contrary save and except the written statement, the management has neither contested the case nor adduced any evidence.

7. Moreover the workman has filed his attendance marked as Ext. W-1 which is signed by FCI Official, that is also unchallenged, from which it is seen that he has worked more than 240 days in a calendar year.

8. Therefore taking into the unchallenged testimony of the workman and documents W 1 & W 2 series, and considering the facts and circumstance of this case, I hold that the action of the management of Food corporation of India in terminating the service of Shri Bhopal Tiwary instead of regularizing the service is not legal and justified, Hence It is ordered to take the workman into service at once without giving him any back wages.

This is my award.

R. K. SARAN, Presiding officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 78/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/315/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

SCHEDULE

S.O. 2494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/315/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT :** SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 78 OF 2004.**PARTIES :**

Shri Vinod Kumar,
Addl.State Secretary, FCI C/o FCI,
Exhibition Road, Patna.1

Vs.

Sr. Regional Manager,
Food Corporation of India Ltd.,
Exhibition Road, Patna.1

Ministry's Order No L-22012/315/2003-IR (CM-II)
dt.30.06.2004.

APPEARANCES :

On behalf of the : Mr.Vijayendra Kumar,
workman/Union Workmen Representative

On behalf of : Mr. Debashish, Management
the Management Representative

State : Bihar Industry : Food & Pub. Distribution

Dated, Dhanbad, the 23rd July, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-22012/315/2003-IR (CM-II) dt. 30.06.2004.

“Whether the action of the Management of Food Corporation of India, Patna in not regularizing the services of Sri Nand Lal Gupta and Pawan Kumar Ram as Class IV in terms of Head Quarter Circular dt.6.5.1987 is legal and justified? If not, to what relief the workmen are entitled to?”

On receipt of the Order No. L-22012/315/2003-IR(CM-II) dt.30.06.2004.of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 78-2004 was registered on 19.07.2004 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their Representatives and contested the case, respectively

2. The case of the sponsoring FCI Executive Staff Union State Committee, Bihar, for two workmen Nand Lal Gupta and Pawan Kumar Ram, is that both of them were employed as casual Class IV workmen under the Management of F.C.I., Bhagalpur w.e.f. 18.11.1982 and 19.1.1986 respectively. They were discharging their duty identical to that of the Watchman and the Messenger. When they demanded for their regularization in Category-IV employees after considerable period, they were illegally stopped from attending their job w.e.f. 14.4.88 & 20.1.1988 without any notice or pay and compensation notices under Sec.25 F of the I.D.Act 1947.During 1988-89,the services of large number of casual employees/Labour/Daily wage workers were regularized against the Cat.IV post mostly as Watchman as per the circular dt.6.5.1987 issued by the FCI Head Quarter, following the matter raised by the Union for regularization of more than 1000 casual employees working in the different depot/offices of the F.C.I. all over the Country. But the case of these workmen concerned was not considered, and on their demand for regularization, the Management instead illegally stopped them from attending their job w.e.f. 14.4.1988 and 20.01.88 respectively without compliance with the mandatory provision U/s 25 F of the I.D. Act, 1947, as their stoppage from attending their job amounts to retrenchment.

On raising he industrial disputes, the Ref.Nos.34/ 1991 and 91/91 of workmen Nand Lal Gupta and Pawan Kumar Ram were referred to the CGIT No.1, Dhanbad, and accordingly as per the Awards dt. 22.11.1995 and 7.1.1993,

the actions of the Management in terminating the services of the casual workers were held unjustified, directing the Management to reinstate them and to pay them back wages, observing “The Management may consider his regularization in accordance with the rules of the Company” and “the Management should consider his claim for regularization in service as Class- IV employees as and when vacancy in such arise”, respectively. As per the awards, they were though reinstated in their job, yet without considering the aforesaid observations of the Tribunal concerned whereas the services of their co-workers were regularized in the terms of the H.Qr’s Circular dt.6.5.1987, as huge vacancies were available as till date.

The action of the Management in not regularizing their services is quite illegal and justified. The workmen have been still discharging their duties as Category IV employees; they are entitled to their reinstatement, regularization with wages and other benefits thereof w.e.f. their dates of retrenchment.

3. In their rejoinder by Mr.V.Kumar, the Regional Secretary of the Union on their behalf, categorically denying all the allegations of the O.P./Management, it has been alleged that as per already amended Sec.22 of the Trade Union Act, even a retired person like him is competent to hold the office of Trade Union, and to represent the workmen. The Management has decided a policy matter to regularize the casual employees and as per the said circular, a casual employee who has worked for 90 days on or before 2.5.1986 shall be regularized against category III & IV post according to their qualifications. Both the workmen have fulfilled all the conditions of the said circular, so they are entitled to their regularization in Cat.-IV post. They are working casual Cat.IV employee at FSD.FCI, Jamuai and are being paid by the DM, FCI, Bhagalpur, and the competent Authority to appoint Cat.IV Staff. There are huge vacancies against Cat. IV post in Bihar Region. So they are entitled to regularization in view of their long services.

4. Whereas categorically denying the allegations of the Union/workmen, the O.P./Management has filed their written statements under two parts - A and B as preliminary issue over the maintainability of the reference, and the statements on merits respectively.

The workmen had earlier raised the dispute before the CGIT and its award has also been implemented, soon thereafter the workmen have got the reference made before the Tribunal in entirely unjustified manner illegally through one V.Kumar illegally representing himself as the Secretary of FCI Executive Staff Union, but he is not so de facto de jure, because he was not an employee of FCI under Sec.36 of the I.D.Act to represent, nor could be a member of office bearer of the said union.

5. The Management of the F.C.I has been along established u/s 3 of the Food Corporation Act 1964, and is fully owned and controlled by the Central Government. It has its recruitment rules for employment of any staff against the vacancy posts sanctioned by the authorized persons; and for it, the conditions are required to apply for it through the Employment Exchange concerned. After undergoing the prescribed tests conducted by the Committee of the authorized persons for it, only successful candidate is given an appointment letter containing terms and conditions of service as per an office order of the Competent Authorities in the F.C.I. None of both persons Nand Lal Gupta and Pawan Kumar Ram has been selected as per the prescribed procedure for any sanction post. So the question of the employment stands completely ruled out. They were casual employees under a contractor, so they could never be called as the employees of the F.C.I. at any material times. Hence the question of their alleged termination is totally concocted. The workmen have nowhere stated, the post of their appointment, their designation, the nature of their duties, their wages by whom to be paid. Both the workmen have no work at all in the FCI, and have been sitting idle, and time to time payment of any salary/wages is entirely wastage of the F.C.I. financial resources. They are not entitled to regularization or any relief in view of the prevalent facts and circumstances, as none of the workmen fulfills the conditions and criteria of the circular dt.6.5.1987 which does not confer on any of third persons any right for it. Due to the Award passed by the CGIT No.1, Dhanbad, in the previous Reference Case No.34/ 1991, the present reference is barred by the principles of estoppel and Res Judicata.

FINDING WITH REASONS

6. In the instant reference, the Complaint Application No.20/2006 under Sec.33 of the I.D.Act, 1947 was filed by Mr.Ashok Kr.Verma, the G.M. (R), FCI, Patna on 28.03.2006 against both the workmen for permission to terminate their services with immediate effect by way of discharge. Though Mr.V.Kumar, the Representative of the workmen appeared only on 30.07.2012, no written objection filed on behalf of the workmen till date. So it could not be deposed of”. Meanwhile, the Union Representative for the workmen and the O.P./Management prefer to contest the I.D. At full trial, the WWI Pawan Kumar Ram, WW2 Nand Lal Gupta, both workmen, and WW3 Vijayendra Kumar, the Zonal Secretary of FCI, for Exec.Staff Union, Patna, and MWI Quazi Md.Imran, the A.G.I.(M), for the O.P./Management have been respectively examined.

On perusal of the pleadings, evidences, oral and documentary, of the workmen, and the OP/Management, it appears incontrovertible that both the workmen Nand Lal Gupta and Pawan Kumar Ram were undoubtedly casual daily wagers. But in view of the facts of both the

parties at variance with each other, the main question evolves from the terms of the reference under adjudication:

‘Whether both the workmen are entitled to regularization in their services as Class IV in the terms of the Head Quarter Circular dt.6.5.1987 or whether any of both the workmen had worked as casual/daily rated workers for more than 3 months, i.e., 90 days on or before the cut-off date of 2.5.1986 as per the said Circular.’

Mr. Vijayendra Kumar, the Learned Union Representative for both the workmen has submitted as per his written argument as well that both workmen Nand Lal Gupta and Pawan Kumar Ram were reinstated in their services of the FCI, Bhagalpur Branch with their back wages w.e.f. 14.4.1988 and 21.1.1988 of their terminations as per their own Awards dt. 27.1.1995 and 07.01.1993 passed by the CGIT No.1, Dhanbad, in their respective Reference Nos.34/1991 and 91 /1991 respectively, with the observation of the Tribunal concerned in the latter Award in respect of latter workman: “...The Management should consider his claim for regularization in services as class IV employees and as and when vacancy in such post arises” as also observed by the Hon’ble Patna High Court (Ranchi Bench) as per the order dt. 5.4.1994 in the CWJC No.174/1994 - “If any post of watchman is still found vacant in the Corporation, the petitioner shall be given preference over others,” which has not been carried out despite the vacancies existing still as per the photo copies sanctioned/ existed/vacancy (Extt.W.5 & 5/1 with objections); hence the present Reference has been brought by both the workmen for their regularization in their service as class IV in terms of H.Qr. Circular dt.6.5.1987 (Ext.W.3 & 3/1) according to which about 100 similarly situated other workmen even junior to these both workmen have been regularized, though both the workmen have fulfilled the requisite conditions of the said circular. In support of his argument, the Union Representative for both the workmen has filed the photocopy of the Judgment dt. Feb.17, 2014 of the Hon’ble Supreme Court passed in the Civil Appeal Nos.2417, 2418/2014 (arising out of S.L.P. (Civil) Nos. 29634, 29635/2008), Hari Nandan Prasad & Ans. (Govind Kr.Choudhary) Vs. Employer I/R to the Management of FCI & Ans. underlying the contents of its paras 36, 37 & 38 that “... other has been given benefits of circular dt.6.5.1987, then the workmen are also entitled to get the same benefits of regularization as provided under the said circular. The Hon’ble Apex Court has also held that there should not be any discrimination, if there is discrimination and unfair labour practice, then it is within the power of the IT (Industrial Tribunal) to award regularization of service, “as such both the workmen legally entitled to regularization in their services as class IV in accordance with the said H.Qr. circular.

7. Whereas just contrary to it, Mr. Debashish, the Manager as the Representative for the O.P./Management likewise as per his written argument as well has contended that both the persons concerned were indisputably daily wager/casual workers, but they were never appointed as per the Recruitment Policy/Rules of the FCI Management, which is the statutory body fully owned, controlled and carried on by the Central Government, nor any of them has ever accordingly completed 240 days in a calendar year, so none of the workmen had any right vested to seek regularization as a matter of right as his casual engagement. Further, It has been emphatically contended by Mr. Debashish, the Representative for the O.P./Management that both the workmen were working as casual labourer purely on casual basis, following their accordingly re-instatement as earlier by virtue of their awards concerned, but they have not fulfilled any of the criteria for their recruitment to any post in the Government Organization or Undertaking as held by the Hon’ble Supreme Court in the famous case of Uma Devi reported in 2006 (4) SCC as also affirmed in the case of the Official Liquidator reported in 2008 (1) SCC.

8. On perusal and consideration of the materials available on the case record, I find the facts as under:

- (i) Both the workmen have based the H.Qr. Circular dt.6.5.1987 as referred in the Schedule to the Reference as well as the Circular No.38/1996 dt.09.09.1996 (Extt.W.3 and 3/1 respectively) for their regularization as Class IV. The former circular relates to the relaxation of the ban as per the previous two circular Nos.33/1980 & 28/1986 over the recruitment for filling in any entry level Cat.III & IV posts for considering casual/daily rated employees completing three months periods on 2.5.1986, the date of imposing the ban on such engagement. It also negatively bears the instruction not applicable to such casual employees not fulfilling the aforesaid requisite qualification.
- (ii) Whereas the latter circular also emphasizes the approval of the Authority for the regularization of services of genuine workers left over who could not be considered earlier for their regularization on the aforesaid cut-off date of 2.5.1986 who had fulfilled the conditions as per the confidential letter dt.6.5.1987 (the former circular). The statement of Nand Lal Gupta (WW2) reveals his engagement as a casual labour by the F.C.I., Bhagalpur on 18.11.1982 and since then he worked till 14.4.1998, the date of his removal from the service, whereas the statement of another workman Pawan Kumar Ram (WWI) points out his engagement as a casual labour at FCI, Jassidih

for more than 100 days from 1.1.1986 to 2.5.1986, but the photocopy of the Dy.Manager's letter dt.19.6.1996 to the Joint Manager (RI) Staff, FCI, H.Qr., New Delhi in respect of CWJC No.174/94 filed by Pawn Kumar Ram as a casual labour (Ext.W.4 with objection) reveals his engagement as a casual labour at FSD, Jassidih, Bhagalpur on 19.4.1986 which makes his case vague. None of the workmen has any documentary proof of his working as casual for 90 days on 2.5.1986, the cut-off date as per the relevant circular.

9. Under the circumstances, I come to the conclusion that none of the workmen has clearly proved their own cases nor that others similarly situated workers have been regularized by the employer under the same scheme, nor anything like any unfair labour practice towards the workmen on their behalf. It is the settled law of the Land that since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization, and also that the Industrial adjudicator would be achieving the equality by upholding Article 14 of the Indian Constitution, rather than violating this Constitution provision as held by the Hon'ble Apex Court in the renowned Uma Devi Case reported in (2006)4 SCC1. In the backdrop of the present case, the argument of Vijayendra Kumar, the Union representative for the workmen, appears to be quite hallow and baseless.

Hence it is hereby, in the in terms of the reference, responded and held that the action of the Management of Food Corporation of India Ltd., Patna in not regularizing the services of Shri Nand Lal Gupta and Pawan Kumar Ram as Class -IV in the terms of H.Qr. circular dt.6.5.1987 is quite legal and justified. So the workmen are not entitled to regularization as Class IV in the services of the FCI concerned.

KISHORI RAM, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 32/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/105/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/105/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 32 OF 2005

PARTIES:

The management of Parasea Open Cast Project, Kunustoria Area of M/s. ECL

Vs.

Shri Dilip Kumar Mondal

REPRESENTATIVES:

For the management : Sri P. K. Goswami,
Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated 06.08.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/105/2004/IR(CM-II) dated 11.05.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Parasea Open Cast Project under Kunustoria Area of M/s. E.C.Ltd. in determining the age/date of birth made through Apex Medical Board as 42 and half years as on 27.8.1992 i.e. date of birth as 27.02.1950 in respect of Shri Dilip Kumar Mondal is correct and justified? If not, to what relief an individual is entitled?”

Having received the Order of Letter No. L-22012/105/2004/IR(CM-II) dated 11.05.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 32 of 2005 was registered on 31.05.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that my predecessor (Late Jayanta Kumar Sen, the then P.O.) had reserved an award in this case because the union / workman neither appearing nor taking any step since 15.07.2005 despite registered notices. Several adjournments were granted but to no effect. So it is apparent that the workman is not at all interested to proceed with the case further. As such the case is closed and accordingly a 'No Dispute Award' may be passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 05/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/16/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/16/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE No. 05 OF 2004

PARTIES:

The management of Lacchipur Colliery,
Kajora Area of M/s. ECL

Vs.

Sri Motilal Majhi

REPRESENTATIVES:

For the management : Sri P. K. Goswami,
Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated : 06.08.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/16/2003-IR(CM-II) dated 19.01.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Lacchipur Colliery, Kajora Area of M/s. ECL in dismissing Shri Motilal Majhi, U.G. Trammer from the service is legal and justified? If not, to what relief the said workman is entitled?"

Having received the Order of Letter No. L-22012/16/2003-IR(CM-II) dated 19.01.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 05 of 2004 was registered on 04.02.2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that my predecessor (Late Jayanta Kumar Sen, the then P.O.) had reserved an award in this case because the workman is neither appearing nor taking any step after 10.09.2009. Several opportunities were granted but to no effect. It seems that the workman is no more interested to proceed with the

case further. As such the case is closed and accordingly a 'No Dispute Award' may be passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 70/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/167/2000-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/167/2000-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 70 of 2001

Employers in relation to the management of Food Corp.
of India, Patna

AND

Their workmen

Present :

Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Sri U.N. Lall, Advocate

For the workman : Sri S.N. Goswami, Advocate

State : Bihar

Industry : Food

Dated : 21/8/2014

AWARD

By Order No.L-22012/167/2000-IR(C-II), dated 08/03/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether Shri Dasrath Prasad has worked for more than 240 days with the management of FCI since 2nd March 1998 to 28th April 1999? If so, whether the action of the management of FCI in terminating the service w.e.f. 29.04.1999 is legal & justified? If not, to what relief the workman is entitled to?"

2. The case is received from the Ministry of Labour & Employment on 03.04.2001. After notice, both parties appeared, the concerned workman files their written statement on 18.01.2002. After that the management files written statement-cum-rejoinder on 14.06.2002. Thereafter rejoinder and document filed by the parties. Two witnesses examined on behalf of the workman but one witness examined on behalf of the management. Document marked by both side as W-1 to W-7 by the workman and M-1 to M-14 by the management.

3. The short point to be decided in this reference case that as to whether the concerned workman worked under the FCI management from 02.08.1998 to 28.04.1999 or not. From the document filed by the workman, there is no scent that the workman ever worked under the FCI for a single day.

4. Documents available to the effect that the workman applied for the post but could not be selected for the post. But the workman being physically handicapped candidate so his name was recommended for the post to be appointed, which was not approved by the head office.

5. Mere recommendation for the post does not create any right for absorption in the post, The documents filed by the workman does not prove that he was working in the FCI, as temporary or casual workmen.

6. Considering the facts and circumstance of this case, I hold that the action of the management of FCI in terminating the service of Sri Dasrath prasad w.e.f 29.04.1999 is legal & justified. Accordingly his claim is refused and he is not entitled to get any relief.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2498.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 12/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/10/2008-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/10/2008-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT :**

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 12 OF 2008**PARTIES :**

The management of Chinakury Mine No. 1 of M/s. ECL

Vs.

Sri Swapan Bouri

REPRESENTATIVES :

For the management : Sri P. K. Das, Ld. Advocate

For the union : Sri Rakesh Kumar General
(Workman) Secretary of K.M.C.

Industry : Coal State : West Bengal

Dated 04.08.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/10/2008-IR(CM-II) dated 11.03.2008 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Chinakury Mine No. 1 of M/s. ECL in dismissing Shri Swapan Bouri w.e.f. 03.08.2006 is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order of Letter No. L-22012/10/2008/IR(CM-II) dated 11.03.2008 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 12 of 2008 was registered on 17.03.2008 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rakesh Kumar, General Secretary of the union appears and submits that the case may be closed as the workman has already been reinstated in service. Sri P. K. Das, Ld. Advocate, who appears on behalf of the management also admits the fact. Since the workman has been reinstated in service the case is closed. As such the case is closed and accordingly an order of “No Dispute” award is hereby passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 86/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/254/2007-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. Eastern

Coalfields Limited and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/254/2007-IR (CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE No. 86 OF 2007

PARTIES:

The management of J.K.Nagar Colliery of M/s. ECL, Burdwan.

Vs.

Sri Sarju Bhuiya

REPRESENTATIVES:

For the management : Shri P. K. Goswami,
Ld. Advocate

For the union (Workman) : Shri S. K. Pandey,
Ld. Representative

Industry : Coal State : West Bengal

Dated : 01.08.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/254/2007-IR(CM-II) dated 25.10.2007 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. ECL in dismissing Sarju Bhuiya w.e.f. 05.09.2005 is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order of Letter No. L-22012/254/2007-IR(CM-II) dated 25.10.2007 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 86 of 2007 was registered on 17.08.05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri S. K. Pandey, representative of the workman appears before the court and submits that the case may be closed and an award may be passed accordingly as the workman has already been reinstated in service through an amicable settlement arrived between the management and the workman, Sri Sarju Bhuiya. On perusal of case record I find that office of the General Manager, Satgram Area, ECL, vide their letter No. Ref.No.SAT/PER/Re-instatement/2014/207 dated 28.05.2014 has intimated this office that the workman Sri Sarju Bhuiya has been declared medically fit and will be reinstated very soon as a settlement has been arrived between the concerned workman and the management of Satgram Area on 06.05.2014.

Considering the above facts, the case is closed and accordingly it is awarded that the case has been settled as per form ‘H’ memorandum of settlement between both the parties as an integral part of it. The terms and conditions of the settlement shall be binding upon both the parties. Hence, it is ordered

ORDER

Let an “Award” be and the same is passed as per above discussion. Form ‘H’ containing terms and conditions does form as an integral part of the Award. Send the copies of the award to the Govt. of India, Ministry of Labour & Employment, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 309/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22011/9/2013-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 309/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of FCI, Regional Office (Punjab) and their workmen, received by the Central Government on 08-09-2014.

[No. L-22011/9/2013-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present:**

Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 309/2013

Registered on 7.1.2014

The General Secretary,
Food Corporation of India,
Handling Workers' Union,
8651, Arakashan Road, Pahar Ganj,
New Delhi-110055

... Petitioner

Versus

The General Manager (Punjab),
FCI, Regional Office (Punjab),
Sector 31, Chandigarh

... Respondents

APPEARANCES

For the workman : Ex parte.

For the Management : Sh. N. K. Zakhmi, Adv.

AWARD

Passed on 11.7.2014

Central Government vide Notification No. L-22011/9/2013-(IR(CM-II)) Dated 9.12.2013, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of FCI in introducing FAP system for DPS labours and not deducting CPF on OTA wages as alleged by the union is just, valid and legal? If not, to what other benefits to the workers entitled for and what directions are necessary in the matter?"

On receipt of the reference, notice was given to the workman-Union through registered cover and none appeared on its behalf and ex parte proceedings were taken vide order dated 5.5.2014. Since the workman-Union was proceeded against ex parte, no statement of claim has been filed to show that the workman-Union is entitled for the relief claimed by it in the reference.

In result, the reference is answered against the workman-Union holding that it is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 99/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/50/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Wani North Area of WCL, Ukani Sub-Area of Wani North Area and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/50/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT,
NAGPUR****Case No. CGIT/NGP/99/2005**

Date: 25.08.2014

- Party No.1 (a)** : The Chief General Manager,
Wani North Area of WCL,
Tahasil Wani, Distt. Yavatmal
Maharashtra
- (b)** : The Sub Area Manager,
Ukani Sub Area of Wani North
Area, Tahasil Wani,
Distt. Yavatmal (MS).

V/s.

- Party No. 2** : Shri Bhalchandra Wararkar
R/o. Near Municipal Council
Primary School No. 4,
Tah. Wani, Distt. Yavatmal,
Maharashtra.

AWARD

(Dated: 25th August, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the

management of Wani North Area of WCL and their workman, Shri Bhalchandra Wararkar, for adjudication, as per letter No.L-22012/50/2005-IR (CM-II) dated 15.12.2005, with the following Schedule:-

“Whether the action of the management in relation to Ukani Sub Area, Wani North Area of WCL, Distt. Yavatmal in terminating the services of Shri Bhalchandra S/o. Manoharrao Wararkar vide order No. Vekoli/Vanashe/Uushe/Uushepra /04/174 dated 10/14.02.2004 is legal and justified? If not, to what relief is the workman entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Bhalchandra M. Wararkar, (“the workman” in short) filed the statement of claim and the management of WCL, (“party No. 1” in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was initially appointed by the party No. 1 on 14.04.1993 as a general mazdoor and posted at Area workshop, Majri Area on the ground of rehabilitation, as the lands of his mother were acquired by party No. 1 and on account of his good work, he was promoted to the post of clerk grade-III, by order dated 18.01.1996 and worked as such till 08.12.1997 and he was again promoted as clerk-grade II and posted to the accounts department and continued till 05.04.2001 and w.e.f. 06.04.2001, he was promoted as clerk grade-I and posted at Kolarpimpri Open Cast Project and continued their till 17.08.2002 and on 19.08.2002, he was transferred to Ukani Sub-Area, in the same post and his entire service record was clean and unblemished.

It is further pleaded by the workman that the Group Account Office made a report to the Sub Area Manager, Kolarpimpri Sub Area that while accounting the bank reconciliation, it was noticed that self cheque bearing No. 43742 dated 11.05.2002 was issued and encashed, but the same was not accounted either in the cash book or in the bank book and on receipt of the report, the Sub Area Manager, Kolarpimpri Sub Area called him and Mr. P.G. Baid, the Finance Manager for preliminary enquiry on 12.10.2002 and Shri P.G. Baid submitted his statement on 12.10.2002 and directed him to sign on three to four plain blank papers and accordingly, he signed on 3-4 blank papers on 12.10.2002, under pressure to avoid disobedience of immediate controlling officer, the Finance Manager and Sub Area Manager, Kolarpimpri reported the matter in the police station, Wani, alleging that he (workman) had misappropriated the fund of WCL on 11.05.2002, suppressing the material facts that Finance Manager, Shri P.G. Baid had asked him to encash the cheque of Rs. 30,000/- from Central Bank and accordingly, he had encashed the cheque and handed over the amount to

Shri P.G. Baid, who had misappropriated the said amount and at the relevant time, the regular cashier, Shri Wanikar was not present and he was performing the duties in place of the regular cashier and Police registered a criminal case against him, vide Crime no. 53/2002. for the offence of Criminal Breach of Trust and the said criminal case is pending for final decision.

It is also pleaded by the workman that party No. 1 issued the charge sheet dated 18.10.2002, under clause 26.1 of the Standing Order, on the allegations of committing fraud, theft or dishonesty in connection with the employer's business or property and it was further alleged that he was authorized to withdraw an amount of Rs. 30,000/- by cheque No. 43274 dated 11.05.2002 of Central Bank of India, Wani and the said amount was not shown in the cash book as well as in Bank book of Kolarpimpri project and he denied the charges levelled against him in his reply dated 22.10.2002 and the statement and explanation were given on 12.10.2002 under the influence and pressure of Shri Baid and the factual position is that Rs. 30,000/- was withdrawn from Central Bank on 11.05.2002 by the order of Shri Baid and Shri Baid asked him to handover the said amount and accordingly, he handed over the said amount of Rs. 30,000/- to Shri Milind Wanikar in presence of Shri Balu Abhiman Raut and he (workman) deposited the amount in the Bank on 14.10.2002 on the pressure and order of Shri Baid and thus the charges were not based on the factual position and the charges were false and baseless and in spite of the same, the departmental enquiry was conducted against him and he requested the enquiry officer to allow him to engage an advocate for his defence, as he was not well versed with the legal position, but the enquiry officer rejected his request and thus, there was violation of the principles of natural justice and he had also requested the enquiry officer for examination of Shri Baid, Shri Milind Wanikar and Shri Madan, who were involved in the controversy, as his witnesses, to bring the truth on record, but his request was rejected by the enquiry officer and he was not allowed the opportunity to cross-examine the management witness and there was violation of the principles of natural justice and he was condemned unheard and during the enquiry, the enquiry officer put several questions tactfully to prove the charges and he was told that nothing would be happened to him in case of his co-operating with the enquiry and of his having no need to engage a coworker and thus, the enquiry conducted against him is unfair and due to non-examination of Shri Baid and Shri Milind Wanikar as witnesses, the charges as alleged could not have been held to be proved conclusively and the enquiry officer did not consider the affidavit of Shri Balu Abhiman Raut dated 15.01.2003, in which, it was mentioned that on 14.10.2002 he had gone to the house of Shri Miland Wanikar the workman to collect

the amount of Rs. 30,000 which was given to him to hand over the same to the workman for deposit of the same in the Bank and that he (workman) deposited the amount in the Bank and illegally held the charges to have been proved against him and in the enquiry only one witness, namely Shri S. Manokaran, Senior Finance Officer was examined from the side of the management, overlooking the factual position and the enquiry was completed very hurriedly, just to comply the mandatory provisions of law and the party No. 1 issued an order dated 08.08.2003 enclosing the findings and asked him to submit his representation within 72 hours and he made a request by his letter dated 11.08.2003 for supply of certain documents/enquiry reports dated 19.12.2002, 28.12.2002, 10.01.2003 and 11.01.2003 and to grant him one month time to submit his reply to the said show cause notice, but party No. 1 did not supply the same and did not grant time to reply and surprisingly, issued the order dated 10/14.02.2004 inflicting the punishment of dismissal from the services and no communication was issued by party No. 1 rejecting his request for grant of time to submit his reply to the show cause notice and he was not given an opportunity to submit his reply and thus, principles of natural justice were violated and the order dated 08.08.2003 was issued only to complete the empty formality and the impugned order dated 14.02.2004 terminating his services is *ex facie* illegal not in good faith, in utter disregard to the principles of natural justice and in colourable exercise of employer's right, which constitutes victimization.

It is also pleaded by the workman that for the said misconduct, a charge sheet was also issued by party No. 1 against Shri P.G. Baid, the then Finance Manager, Vide No. 1291 dated 24.11.2003 and Shri Baid was suspended and a departmental enquiry was initiated against Shri Baid and the party no.1 should have considered that he (workman) was workman as a clerk grade-I and he was not authorized to write or till the cash book as it was the job of cashier, Shri Milind Wanikar and as the amount of Rs. 30,000 was paid by Shri Baid prior to the issuance of charge sheet dated 18.10.2002 against him, the submission of the charge sheet is illegal and all actions pursuant to the said charge sheet are also illegal and the findings of the enquiry officer are perverse and contrary to the evidence and available material on record and therefore, the order dated 14.02.2004 is illegal and liable to be quashed and set aside and after dismissal from services, he is not in gainful employment.

The workman has prayed for his reinstatement in service with all consequential benefits including the back wages w.e.f. 18.10.2002.

3. The party No. 1 in the written statement, after denying all the adverse allegations made by the workman

was employed as Accounts Clerk Grade-I at Kolarpimpri OCM up to 1/2 .07.2002 and thereafter, he was transferred to Ukani OCM w.e.f. 19.08.2002, where he joined his duty and the Accounts Office, Kolarpimpri informed the then Sub Area Manager, Kolarpimpri Sub Area that a cheque bearing No. 43742 dated 11.05.2002 of Central Bank of India, Wani Branch was handed over to the workman to collect the money against the said cheque and deposit the same in the cash book and though the workman withdrew the cash from the Bank on 11.05.2002 itself, he did not deposit the same in the company's cash nor made any entry thereof in the cash book and the workman being an employee of the accounts cadre was fully aware of Rules of handling cheques and cash of the company and therefore, whatever he did was deliberate with ulterior motive of misappropriating company's money for his personal gain and during the preliminary enquiry conducted by the sub-area Manager, Kolarpimpri sub area on 12.10.2002, the workman confessed to have misappropriated the amount of Rs. 30,000 and used the same for his personal work and finding that *prima facie* there was serious act of misconduct on the part of the workman, he was charge sheeted and placed under suspension by the Sub Area Manager, Ukani Sub area vide charge sheet dated 08.08.2003, as at that time, he was working under Ukani sub area and the workman was asked to submit his written explanation within a stipulated time and the workman submitted his written explanation vide his letter dated 22.10.2002 denying the charges and as his explanation was found not satisfactory, the Sub Area Manager, Ukni Sub Area ordered for initiation of the departmental enquiry against the workman and *vide* order dated 24.10.2002 appointed Shri G.R. Dalnes as the enquiry officer and Shri S. Mangaram as the management representative to make the enquiry and the workman did not object to the appointment of the enquiry officer or management representative and the enquiry officer held the enquiry on seven dates with due intimation to the parties and the workman fully participated in the enquiry and on few early dates, he availed the services of a co-worker, but subsequently, he said that he could conduct his own defence in the departmental enquiry and accordingly, he presented his case before the enquiry officer and the enquiry officer conducted the enquiry in a fair and proper manner by observing the principles of natural justice and he fixed the dates of the enquiry with due notice/intimation to the parties and granted adjournments on some dates as sought by the workman and the parties were allowed to examine their witnesses and file documents, which was fully availed by them and the witness for the management was examined in presence of the workman and he was cross-examined by the workman and his co-worker and the documents of the management were presented in the enquiry in presence of the workman and the same were noted by him and the

workman was offered the opportunity to put up his defence and the workman examined himself and produced documents in his defence and he was cross-examined by the management representative and the proceedings of the enquiry were held in Hindi Language and duly signed by the workman and his co-worker on the days they were present and parties were given opportunity to put up their written argument in response to which the workman submitted his written argument and the enquiry officer submitted his report to the Sub Area Manager, Ukni Sub area on 31.05.2003 holding the charges levelled against the workman to have been proved and on receipt of the enquiry report, a copy of the same was supplied to the workman *vide* letter dated 08.08.2003 and the workman was advised to make his representation if any and the workman submitted *vide* his letter dated 11.08.2003, which was found not to be satisfactory and considering the seriousness of the misconduct, the workman was dismissed from service *vide* order dated 10/14.02.2004 issued by the SAM, Ukni Sub Area after obtaining approval by the competent authority and the enquiry held against the workman was just, fair and proper and he was dismissed from service on the proved act of misconduct of very serious nature and therefore, its action was fully justified and legal.

The party No.1 has also pleaded that the workman had never requested the enquiry officer to allow him to engage a lawyer to defend him in the enquiry and the same is afterthought and motivated and the co-worker of the workman cross-examined the management's witness at length and the enquiry was not conducted in a hurried manner and as many as seven dates were devoted to the enquiry and the enquiry officer closed the enquiry on specific consent of the workman and the workman had already received copies of the day-to-day proceedings and copies of all documents during the course of the enquiry and the same were recorded in the proceedings and signed by the workman and the ground on which he wanted extension of time was frivolous and not considered justified and as such, the same was not granted and the workman was holding charge of the cashier at the relevant time and he was fully competent to write the cash book and to discharge the function of the cashier and therefore, it cannot be considered rational and justified that after the withdrawal of the money from the bank, he misappropriated the same for his personal gain and the report of the enquiry officer is based on evidence on record and hence, there is no question of perversity in the findings of the enquiry officer and as its action is fair, legal and justified, there is no question of grant of any relief to the workman.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry against him, the fairness or otherwise of the departmental

enquiry was taken up as a preliminary issue for consideration and as per order dated 21.04.2014, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that on 11.05.2002, the workman was in charge of the cashier, as the regular cashier was on leave and being directed by Shri Baid, the finance manager and the immediate superior officer of the workman, the workman withdrew an amount of Rs. 30,000 from Central Bank and being asked by Shri Baid, the workman handed over the said amount to him and Shri Baid had told the workman that the regular cashier would make the necessary entry in the account book on his resumption of duty and as such, the workman who was in temporary charge of the cashier did not make any entry in the concerned registers and Shri Baid gave the said amount to one Shri Miland Wanikar and the workman collected the said amount from Shri Wanikar in presence of Shri Balu Abhiman Raut and deposited the amount of Rs. 30,000 in the Bank on 14.10.2002, as per the order and pressure of Shri Baid and the charges levelled against the workman were not based on the factual position and the same were false and baseless and during the departmental enquiry, the workman requested the Enquiry Officer to allow him to examine Shri Baid, Shri Miland Wanikar and Shri Madan as witnesses, but his request was rejected by the Enquiry Officer and the enquiry conducted against the workman was unfair and due to non examination of the material witnesses as mentioned above, it can be said that the charges were not proved conclusively and the workman had filed the affidavit of Shri Balu Abhiman Raut dated 15.01.2003, but the Enquiry Officer did not consider this important and vital aspect and illegally held the charges to have been proved against the workman and as such, the findings of the Enquiry Officer are perverse and contrary to the evidence and available material on record and after receipt of the second show cause notice, the workman had requested *vide* his letter dated 11.08.2003 for supply of some documents and also for one month time, to file his reply, but party No.1 neither supplied the documents nor granted any time and without making any communication of rejecting his request, inflicted the punishment of dismissal from services and thus, there was violation of the principles of natural justice and the order of punishment is illegal and the same is liable to be set aside and the workman is entitled for reinstatement in service with continuity and as the workman was not gainfully employed from the date of his dismissal from service, he is also entitled for full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported

in 1993 II CLR-1129 (Managing Director, ECIL (Hyderabad Vs. B. Karunakar) and 2013 (11) SCALE (Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahabidyalaya and others).

6. It is to be mentioned here that on the date fixed for hearing of argument on the points of perversity of the findings of the Enquiry Officer and the proportionality of the punishment, none appeared on behalf of the party No.1 to make argument and as such, no argument was advanced on behalf of the management of party No.1.

7. Perused the record. Considered the submissions made by the learned advocate for the workman. On perusal of the records of the departmental enquiry, it is found that on 10.01.2003, after closure of the evidence from the side of the management, the workman entered in to his defence and examined himself as a witness and he was cross-examined by the management's representative. The workman also examined one Rajesh Bamanrao Dhable as a witness on his behalf. On the request of the workman, the departmental enquiry was adjourned to 11.01.2003 for adducing further evidence from the side of the workman. On 11.01.2003, the workman produced the receipt showing deposit of Rs. 30,000 made on 14.10.2002 by him in Central Bank of India, Wani and the same was taken on record and marked as AWD-I. As thereafter, the workman declined to examine any other witness or to produce any other document, the evidence from his side was closed on 11.01.2003 itself and the enquiry was fixed to 14.01.2003 for filing of written notes of argument by the parties. It is quite clear from the material on record that the workman never asked the Enquiry Officer for examination of Shri P.G. Baid, Shri Miland Wanikar and Shri Madan as witnesses. It is also found from the record that the workman did not produce any affidavit of Shri Balu Abhiman Raut before the Enquiry Officer. Hence, the claim of the workman that he requested the Enquiry Officer for the examination of Shri Baid, Shri Wanikar and Shri Madan as witnesses but the Enquiry Officer rejected his request or that the Enquiry Officer did not consider the affidavit of Shri Balu Abhiman Raut dated 15.01.2003 produced by him is found to be not true and baseless.

8. So far the contention raised by the learned advocate for the workman regarding the non-supply of the copy of the departmental proceedings and time to file reply to the second show-cause notice is concerned, the same had already been considered and dealt with, while considering the fairness or otherwise of the departmental enquiry and as such, there is no scope to reconsider the said submission or the other submissions made regarding the validity of the departmental enquiry.

So far the decision reported in 1993 II CLR-1129 (supra) is concerned, the same is regarding the effect of non-supply of the copy of the report submitted by the enquiry officer to the workman. In the case in hand, it is not the case of the workman that he was not supplied with the copy of the enquiry report. Hence, with respect, I am of the view that the above said decision has no application to the case in hand.

9. On perusal of the materials on record, it is found that this is not a case of no evidence or that the findings of the Enquiry Officer are totally against the evidence on record. It is the admitted case of the workman that he withdrew a sum of Rs. 30,000 from the Bank on 11.05.2002, while he was in charge of the cashier, but he did not make any entry either in the cash book or deposit the same in company's cash. The written admission made by the workman dated 12.10.2002 in that regard was also produced and admitted into evidence in the enquiry. From the materials on record, it is found that the Enquiry Officer has based his findings on the materials on record of the enquiry and not on any extraneous material. The Enquiry Officer has also assigned reasons in support of his findings. So, the findings of the Enquiry Officer cannot be said to be perverse.

10. So far the proportionality of the punishment imposed against the workman is concerned. It is found that grave misconduct of dishonesty and fraud in connection with the employer's business or property has been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of termination of the workman from services cannot be said to be shockingly disproportionate. Therefore, there is no scope to interfere with the punishment.

11. It is to be mentioned here that the other decision cited by the learned advocate for the workman as reported in 2013(11) SCALE-268(supra) is regarding the payment of the back wages. As in this case, it has been held that there is no scope to interfere with the punishment imposed against the workman, there is no scope of any consideration regarding payment of back wages to the workman. Hence, with respect, I am of the view that the said decision has no application to the case in hand.

12. In view of the materials on record and the discussions made above, it is held that the workman is not entitled to any relief. Hence, it is ordered:-

ORDER

The action of the management in relation to Ukani Sub Area, Wani North Area of WCL, Distt. Yavatmal in terminating the services of Shri Bhalchandra S/o. Manoharrao Wararkar *vide* order No. Vekoli/Vanashe/Uushe/Uushepra/04/174 dated 10/14.02.2004 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 21/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/87/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Rajpur Sub Area, WCL, Post Rajur Colliery and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/87/2011-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No. CGIT/NGP/21/2011

Date: 12.08.2014

Party No. 1 : The Sub Area Manager,
Rajur Sub Area, WCL,
Post. Rajur Colliery,
Tah. Wani, Distt. Yavatmal,
Maharashtra.

Versus

Party No. 2 : The General Secretary,
Lal Zhanda Coal Mines
Mazdoor Union, C/O WC Ltd.,
Coal Estate, Civil Lines,
Nagpur.

AWARD

(Dated: 12th August, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Rajur Sub Area, WCL and their workman,

Shri Sadhu Dheba, for adjudication, as per letter No.L-22012/87/2011-IR (CM-II) dated 03.10.2011, with the following Schedule:-

"Whether the action of the management of Majri Area/Wani Area of WCL in denying pay/wages protection to Shri Sadhu Dheba at the time of conversion from Piece Rated to Time Rated workers as per Tripartite settlement dated 02.11.1992 & Modification dated 31.10.1995 is legal and justified? To what monetary compensation or payment of arrears the workman concerned is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zhanda Coal Mines Mazdoor Union" ("the union" in short) filed the statement of claim on behalf of the workman, Shri Sadhu Dheba, ("the workman" in short) and the management of Rajur Sub Area of WCL ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was initially appointed as a Tub Loader on 01.10.1977 and presently posted at Bhandewara Mine of Wani Area as a Tyndal in category IV and in the year 1994, due to fire in Nakoda U.G. Mine, where the workman was then working as a Tub Loader, the work of the said Mine was stopped and as such, *vide* office order dated 18.10.1994, the workman came to be transferred to Nagpur Area on administrative grounds and in view of the said order, the workman was released in his existing capacity and scale of pay from Nakoda Incline to Nagpur Area w.e.f. 26.11.1994, by the office order dated 20.11.1994 and the workman joined his duties in Pipla Colliery of Nagpur Area and at Pipla Colliery, the workman was paid his wages at the basic rate of Group V-A (Piece Rated scale) i.e. basic of Rs. 104.93 and Rs. 20.80 towards SPRA and the workman was again transferred to Majri Area on administrative grounds by office order dated 19.10.1995 and on joining in Majri Area, the workman was wrongly converted to Time Rated Scale of Category-I, in the pay scale of Rs. 38.47-0.70-48.27, whereas at that time, he was getting Rs. 125.73 per day and in the year 2004 also, the wages of the workman came to be reduced to Rs.161.58 from his existing pay of Rs.192.98, without any reason or without affording any opportunity of hearing to him.

The further case of the workman as presented by the union is that no conceivable nexus or sound reasoning was advanced by party No.1 to fix the wages of the workman in the lower stage without notice and the action was arbitrarily in colourable exercise of employer's right by party No.1 and the action of party No. 1 was in breach of clauses 1.3, 1.4 and 4 of the memorandum of settlement

and understanding dated 02.11.1992 and 31.10.1995 respectively and the memorandum of settlement clearly stipulates that on conversion from PR to TR, the management shall fully protect the group wages including SPRA wherever is applicable and the memorandum of understanding dated 31.10.1995 which was reached for the partial modification of the settlement dated 02.11.1992 says that piece rated workmen, who have come into time rated/monthly rated category and already have been paid up to 31.10.1995 according to the settlement dated 02.11.1992, will be paid as per item (3) of the settlement dated 02.11.1992 and the workman is fully entitled for protection of his pay in terms of the said settlement and in the case of one Mh. Aslam, who was identically placed as that of the workman was granted pay protection of his erstwhile piece rated job and the party No.1 adopted discriminatory treatment and pick and choose tactics, in the matter of granting pay protection to the workman and the action of the party No.1 is wholly illegal and unjustified and the workman is entitled for pay protection and the arrear back wages.

3. The party No.1 in the written statement has pleaded inter alia that the action is stated to have arisen in the year 1995, whereas, the alleged dispute was raised by the union before the Assistant Labour Commissioner (Central), Chandrapur on 03-6-2008, nearly 13 years of the alleged cause of action had arisen and as such, the dispute is highly belated and no justification has been pleaded/advanced by the union and therefore, the belated dispute is not maintainable in the eyes of Law and the same is ab-initio void and liable to be rejected.

It is further pleaded by the party No.1 that it is evident from records that the workman accepted time rated job and corresponding wages and has been receiving the same for nearly 13 years without protest and objection and having accepted this position for such a long time, he is debarred from raising the grievance under the principles of estoppels.

The further case of the party No.1 is that after closure of Nakoda Underground Mine of Wani Area due to natural calamity, most of the underground loaders including the workman were transferred to Nagpur Area in October, 1994 and after reporting to Nagpur Area, the workman was deployed in Pipla Mine of the Area and vide office order No. 36.153 dated 10/15.03.1995, issued by the Deputy Personnel Manager, WCL, Nagpur, the workman was transferred to Majri Area to report for duty in time rated category and this transfer to time rated category was on the request of the workman, as is evident from the office order itself and in compliance of the said order and on being released from Nagpur Area, the workman reported for duty at Majri Area and in the order dated 19.10.1995, he was specifically advised to report for time rate and to contact the Chief General Manager, Majri Area and on reporting to Majri Area, the workman

gave written undertaking and acceptance of category-I in time rate on the body of the posting order dated 25.11.1995 itself and in the posting order dated 19.11.1995, it was also specifically mentioned that the same was request transfer and that he would not be entitled to transfer T.A. etc. and from the above facts, it is evident that the placement/conversion of the workman and transfer from Nagpur Area to Majri Area was on his own request and for his own benefit and his case was not a case of administrative transfer and therefore, his entire claim is misconceived and he is not entitled to any relief.

It is also pleaded by the party No.1 that there is no provision in the settlement dated 02.11.1992 to give protection of group wages to loaders in all cases of conversion from piece rated to time rate and the said protection was in respect of the conversion of piece rated workman to time rated as per clause 1.2 of the said settlement and the case of the workman does not fall under clause 1.2, as his conversion was not for filling up vacant post due to natural wastage as determined by man power budgets and to avoid any controversy, the said clause was modified on 31.10.1995, in terms of which, it was further agreed that those loaders who opted for time rated category would not be entitled for protection of group wages and it was further agreed that hence forth, all piece rated workers deployed in time rated job would be paid as per nature of job performed and therefore, the workman is not entitled for protection of group wages under the said settlements and comparison of the case of the workman with the case of Md. Aslam is vague and it is not understood as to when and at what establishment of WCL and under which back ground, the decision in Md. Aslam's case was taken and the prayer of the union and relief sought has no merit and deserves to be rejected.

4. Both the parties have led oral evidence in support of their respective stands, besides placing reliance on documentary evidence.

The workman has examined himself as a witness in support of his case, where as one Prakash Kumar Ram has been examined as a witness on behalf of the party No.1.

5. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that he has already retired from service on superannuation w.e.f. 01.10.2012 and he did not raised any objection about the fitment made by the management regarding his wages at any point of time individually.

6. The evidence of witness, Shri Prakash Kumar Ram on affidavit is in the same line of the stands taken by the party No.1 in the written statement. This witness in his cross-examination has stated that no document has been filed by the management to show that the workman had requested for his transfer to Majri Area.

7. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from the evidence on record that the conversion of the workman from piece rated worker to time rated was due to managerial decision and the same was not done due to any option given by the workman and there are clear cut provisions in the settlements in question for giving pay protection to the piece rated loaders on their conversion to time rate and the workman is entitled for protection of his wages under the provisions of the said settlements and the action of party No.1 in not giving the protection of wages to the workman is illegal.

8. It is necessary to mention here that on 22.07.2014, to which date the reference was fixed for argument, party No.1 and so also, advocate for the party No.1 remained absent and no argument was made on behalf of the party No.1.

9. On perusal of the materials on record including the evidence adduced by the parties, both oral and documentary, it is found that the workman was working as a piece rated loader in Nakoda Incline of Wani Area and he was transferred to Nagpur Area along with other loaders, as Nakoda Incline was closed due to natural calamity, as per office order dated 18.10.1994, Ext. W-I. It is also clear from the document, Ext. W-I that direction was given for the posting of the workman and other loaders transferred from Nakoda Incline to Nagpur Area in Saoner Mine No.III in time rated jobs. It is also found from the document, Ext. W-II the office order dated 20.11.1994 that the workman was released from Nakoda Incline in his existing capacity and scale of pay. It is crystal clear from Exts. W-I and W-II that by administrative order of Party No.1, the workman was converted to time rated worker from piece rated worker and the same was done as per managerial decision and the conversion of the workman was not due to any option given by the workman as claimed by the party No.1. The subsequent order of transfer of the workman from Nagpur Area to Majri Area was an order of transfer and not an order of conversion of the workman. So, the said order has no bearing to decide the question of conversion of the workman from piece rated to time rated.

10. For better appreciation, I think it proper to mention paragraphs 1(i) to 1(iii) of the settlement dated 02.11.1992. The same are as follows:-

1.1 Demand No.1 (i):-

That the management shall provide alternate/light job to the employees particularly loaders who are physically weak due to their old age, sickness or I.O.D. irrespective of vacancies.

1.2 Demand No. 1 (ii)

That the management shall fill up 50% vacancies arising out of natural wastage in Time Rated and

monthly Rated category/grade from amongst the piece rated workers who have completed at least 15 years of service.

1.3 Demand no. 1 (iii)

That the management shall on conversion from P.R. to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category/grade if exceeds the maximum of the category/grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/promotion. This decision shall be effective from 01.01.1992. It is also agreed that the cases already converted between 14.11.1990 to 31.12.1991 shall be considered for notional fixation only and earlier cases not be considered.

11. On perusal of the settlement dated 02.11.1992, it is found that in para 1(iii), the party No.1 has agreed to protect the wages of the loaders converted to time rated or monthly rated. There is no specification in that paragraph that the same will apply only to cases covered under para 1(ii). On plain reading of the paragraphs 1(i) to 1(iii), it is found that there is nothing in the same to show that para 1(iii) has no application to the cases of para 1(i), directly or by implication. Hence, I find no force in the submission made by the party No.1 in that respect.

12. So far the modified settlement dated 31.10.1995 is concerned, on perusal of the same, it is found that in para 5, provision has been made to protect the wages of the loader converted to time rated or monthly rated category under certain circumstances. Paragraph 5 of the said settlement reads as follow:-

“Such piece rated workman who may put in time rated/ monthly rated in future by managerial decisions i.e. without seeking option from time rated/monthly rated or without going through the selection process against internal notification from time rated/monthly rated, will continue to get protection of piece rated wages such piece rated workmen who came to TR as per option given by them will not get this benefit.”

13. The party No.1 has taken the plea of inordinate delay in raising the dispute. In this regard, it is well settled that though the court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In case of delay, no formula of universal application can be laid down and it would depend upon the facts and circumstances of each case. The Court dealing with the reference will have to hold an enquiry and record its finding on the question whether the reference should be dismissed on the ground of delay. In appropriate cases, the Court may mould the

relief either by reducing the back wages or by denying it completely.

On perusal of the record, it is found that there was much delay in raising the dispute and no explanation has been furnished by the workman or union for the delay in raising the dispute. However, it is not the case of the Party No. 1 that the delay is fatal to it, as because the delay has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It is also pleaded by the Party No. 1 that due to the delay in raising the dispute caused any prejudice to it. Hence, it is not a fit case to dismiss the reference on the ground of delay. However, the delay in raising the dispute will be taken into consideration while granting relief if any to the workman.

14. As in this case, it has already been held that the workman did not give any option for his conversion and the conversion was made by party no.1 by an administrative order and the same is a managerial decision, the workman is entitled for protection of the basic wages and SPRA of loader.

15. At this juncture, I think it proper to mention about the decision of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, and Nagpur in W.P. No. 476 of 2014 (Keshav Vs Senior Manager (Mine), Saoner Mine No. 1) in regard to protection of wages of the workmen. Taking into consideration the delay in raising the dispute, the Hon'ble High Court granted the benefit of pay protection to the concerned workmen, only from the period of 3 years prior to filing of petition before the Hon'ble Court.

16. Admittedly, there is unexplained delay of about 11 years in raising the dispute. Taking in to consideration such delay in raising the dispute and applying the principles enunciated by the Hon'ble High Court, Nagpur Bench in Writ petition No.476/2014 to the case in hand, I think it proper to give the benefit of protection of wages to the workman from the preceding three years of raising of the dispute by the workman before the Conciliation Officer-cum-Assistant Labour Commissioner (Central), Chandrapur. Accordingly, the workman is entitled for the deferential of wages of Loader and general mazdoor category I, from the preceding three years of the raising of the dispute before the Conciliation Officer and not from the date of his transfer to Majri Area, as claimed by him and consequential benefits arising out of such pay protection. Hence it is ordered:-

ORDER

The action of the management of Majri Area/Wani Area of WCL in denying pay/wages protection to Shri Sadhu Dheba at the time of conversion from Piece Rated to Time Rated workers as per Tripartite settlement dated 02.11.1992 & Modification dated 31.10.1995 is illegal and unjustified.

The workman is entitled for the benefit of protection of wages from the preceding three years of the date of raising of the dispute before the Conciliation Officer-cum-Assistant Labour Commissioner (Central), Chandrapur. Accordingly, the workman is entitled for the differential of wages of Loader and general mazdoor category I, from the preceding three years of the date of raising of the dispute before the Conciliation Officer and not from the date of his transfer to Majri Area, as claimed by him. The workman is also entitled for the consequential benefits arising out of such pay protection. The Party No. 1 is directed to pay the arrears of the differential of wages of Loader and General Mazdoor, Category-I to the workman within one month of the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 22/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/128/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2503.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Rajpur Sub-Area, WCL. Post Rajpur Colliery, and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/128/2011-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT,
NAGPUR**

Case No. CGIT/NGP/22/2011

Date: 12.08.2014

Party No. 1 : The Sub-Area Manager,
Rajur Sub-Area, WCL,
Post. Rajur Colliery,
Tah. Wani, Distt. Yavatmal,
Maharashtra

Versus

Party No. 2 : The General Secretary,
Lal Zhanda Coal Mines
Mazdoor Union, C/O WC Ltd.,
Coal Estate, Civil Lines,
Nagpur

AWARD

(Dated: 12th August, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Rajur Sub-Area, WCL and their workman, Shri Babulal Dhelba, for adjudication, as per letter No.L-22012/128/2011-IR (CM-II) dated 03.10.2011, with the following Schedule:-

"Is the action of the management of Majri Area/Wani Area of WCL in denying pay/wages protection to Shri Babulal Dhelba at the time of conversion from Piece Rated to Time Rated workers as per Tripartite settlement dated 02.11.1992 & Modification dated 31.10.2005 is legal and justified? To what monetary compensation or payment of arrears and post retirement benefits the claimant is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zhanda Coal Mines Mazdoor Union" ("the union" in short) filed the statement of claim on behalf of the workman, Shri Babulal Dhelba, ("the workman" in short) and the management of Rajur Sub-Area of WCL ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was initially appointed as a Tub Loader on 01.10.1977 and presently posted at Bhandewara Mine of Wani Area as a Tyndal in category IV and in the year 1994, due to fire in Nakoda U.G.Mine, where the workman was then working as a Tub Loader, the work of the said Mine was stopped and as such, vide office order dated 18.10.1994, the workman came to be transferred to Nagpur Area on administrative grounds and in view of the said order, the workman was released in his existing capacity and scale of pay from Nakoda Incline to Nagpur Area w.e.f. 26.11.1994, by the office order dated 20.11.1994 and the workman joined his duties in Pipla Colliery of Nagpur Area and at Pipla Colliery, the workman was paid his wages at the basic rate of Group V-A (Piece Rated scale) i.e. basic of Rs. 104.93 and Rs. 20.80 towards SPRA and the workman was again transferred to Majri Area on administrative grounds by office order dated 19.10.1995 and on joining in

Majri Area, the workman was wrongly converted to Time Rated Scale of Category-I, in the pay scale of Rs. 38.47-0.70-48.27/-, whereas at that time, he was getting Rs. 125.73/- per day and in the year 2004 also, the wages of the workman came to be reduced to Rs.161.58 from his existing pay of Rs. 192.98/-, without any reason or without affording any opportunity of hearing to him.

The further case of the workman as presented by the union is that no conceivable nexus or sound reasoning was advanced by party No.1 to fix the wages of the workman in the lower stage without notice and the action was arbitrarily in colourable exercise of employer's right by party No.1 and the action of party No.1 was in breach of clauses 1.3, 1.4 and 4 of the memorandum of settlement and understanding dated 02.11.1992 and 31.10.1995 (wrongly mentioned as 31.10.2005 instead of 31.10.1995 in the schedule of reference) respectively and the memorandum of settlement clearly stipulates that on conversion from PR to TR, the management shall fully protect the group wages including SPRA wherever is applicable and the memorandum of understanding dated 31.10.1995 which was reached for the partial modification of the settlement dated 02.11.1992 says that piece rated workmen, who have come into time rated/monthly rated category and already have been paid up to 31.10.1995 according to the settlement dated 02.11.1992, will be paid as per item (3) of the settlement dated 02.11.1992 and the workman is fully entitled for protection of his pay in terms of the said settlement and in the case of one Mh. Aslam, who was identically placed as that of the workman was granted pay protection of his erstwhile piece rated job and the party No.1 adopted discriminatory treatment and pick and choose tactics, in the matter of granting pay protection to the workman and the action of the party No.1 is wholly illegal and unjustified and the workman is entitled for pay protection and the arrear back wages.

3. The party No.1 in the written statement has pleaded inter alia that the action is stated to have arisen in the year 1995, whereas, the alleged dispute was raised by the union before the Assistant Labour Commissioner (Central), Chandrapur on 03-6-2008, nearly 13 years of the alleged cause of action had arisen and as such, the dispute is highly belated and no justification has been pleaded/advanced by the union and therefore, the belated dispute is not maintainable in the eyes of Law and the same is ab-initio void and liable to be rejected.

It is further pleaded by the party No.1 that it is evident from records that the workman accepted time rated job and corresponding wages and has been receiving the same for nearly 13 years without protest and objection and having accepted this position for such a long time, he is debarred from raising the grievance under the principles of estoppels.

The further case of the party No.1 is that after closure of Nakoda Underground Mine of Wani Area due to natural calamity, most of the underground loaders including the workman were transferred to Nagpur Area in October, 1994 and after reporting to Nagpur Area, the workman was deployed in Pipla Mine of the Area and vide office order no. 36.153 dated 10/15.03.1995, issued by the Deputy Personnel Manager, WCL, Nagpur, the workman was transferred to Majri Area to report for duty in time rated category and this transfer to time rated category was on the request of the workman as is evident from the office order itself and in compliance of the said order and on being released from Nagpur Area, the workman reported for duty at Majri Area and in the order dated 19.10.1995, he was specifically advised to report for time rate and to contact the Chief General Manager, Majri Area and on reporting to Majri Area, the workman gave written undertaking and acceptance of category-I in time rate on the body of the posting order dated 25.11.1995 itself and in the posting order dated 19.11.1995, it was also specifically mentioned that the same was request transfer and that he would not be entitled to transfer T.A. etc. and from the above facts, it is evident that the placement/conversion of the workman and transfer from Nagpur Area to Majri Area was on his own request and for his own benefit and his case was not a case of administrative transfer and therefore, his entire claim is misconceived and he is not entitled to any relief.

It is also pleaded by the party No.1 that there is no provision in the settlement dated 02.11.1992 to give protection of group wages to loaders in all cases of conversion from piece rated to time rate and the said protection was in respect of the conversion of piece rated workman to time rated as per clause 1.2 of the said settlement and the case of the workman does not fall under clause 1.2, as his conversion was not for filling up vacant post due to natural wastage as determined by man power budgets and to avoid any controversy, the said clause was modified on 31.10.1995, in terms of which, it was further agreed that those loaders who opted for time rated category would not be entitled for protection of group wages and it was further agreed that hence forth, all piece rated workers deployed in time rated job would be paid as per nature of job performed and therefore, the workman is not entitled for protection of group wages under the said settlements and comparison of the case of the workman with the case of Md. Aslam is vague and it is not understood as to when and at what establishment of WCL and under which background, the decision in Md. Aslam's case was taken and the prayer of the union and relief sought has no merit and deserves to be rejected.

4. Both the parties have led oral evidence in support of their respective stands, besides placing reliance on documentary evidence.

The workman has examined himself as a witness in support of his case, where as one Prakash Kumar Ram has been examined as a witness on behalf of the party No.1.

5. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that he has already retired from service on superannuation w.e.f. 01.10.2012 and he did not raised any objection about the fitment made by the management regarding his wages at any point of time individually.

6. The evidence of witness, Shri Prakash Kumar Ram on affidavit is in the same line of the stands taken by the party No.1 in the written statement. This witness in his cross-examination has stated that no document has been filed by the management to show that the workman had requested for his transfer to Majri Area.

7. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from the evidence on record that the conversion of the workman from piece rated worker to time rated worker was due to managerial decision and the same was not done due to any option given by the workman and there are clear cut provisions in the settlements in question for giving pay protection to the piece rated loaders on their conversion to time rate and the workman is entitled for protection of his wages under the provisions of the said settlements and the action of party No.1 in not giving the protection of wages to the workman is illegal.

8. It is necessary to mention here that on 22.07.2014, to which date the reference was fixed for argument, party No.1 and so also, advocate for the party No.1 remained absent and no argument was made on behalf of the party No.1.

9. On perusal of the materials on record including the evidence adduced by the parties, both oral and documentary, it is found that the workman was working as a piece rated loader in Nakoda Incline of Wani Area and he was transferred to Nagpur Area along with other loaders, as Nakoda Incline was closed due to natural calamity, as per office order dated 18.10.1994, Ext. W-I. It is also clear from the document, Ext. W-I that direction was given for the posting of the workman and other loaders transferred from Nakoda Incline to Nagpur Area in Saoner Mine No.III in time rated jobs. It is also found from the document, Ext. W-II the office order dated 20.11.1994 that the workman was released from Nakoda Incline in his existing capacity and scale of pay. It is crystal clear from Exts. W-I and W-II that by administrative order of Party No.1, the workman was converted to time rated worker from piece rated worker and the same was done as per managerial decision and the conversion of the workman was not due to any option

given by the workman as claimed by the party No.1. The subsequent order of transfer of the workman from Nagpur Area to Majri Area was an order of transfer and not an order of conversion of the workman. So, the said order has no bearing to decide the question of conversion of the workman from piece rated to time rated.

10. For better appreciation, I think it proper to mention paragraphs 1(i) to 1(iii) of the settlement dated 02.11.1992. The same are as follows:-

1.1 Demand no.1(i):-

That the management shall provide alternate/light job to the employees particularly loaders who are physically weak due to their old age, sickness or I.O.D. irrespective of vacancies.

1.2 Demand no. 1(ii)

That the management shall fill up 50% vacancies arising out of natural wastage in Time Rated and monthly Rated category/grade from amongst the piece rated workers who have completed at least 15 years of service.

1.3 Demand no. 1(iii)

That the management shall on conversion from P.R. to TR/MR will fully protect the group wages including SPRA wherever applicable. The basic pay so fixed in the TR/MR category/grade if exceeds the maximum of the category/grade, the balance will be treated as personal pay to the person concerned which shall be adjusted in the subsequent revision of pay/promotion. This decision shall be effective from 01.01.1992. It is also agreed that the cases already converted between 14.11.1990 to 31.12.1991 shall be considered for notional fixation only and earlier cases not be considered.

11. On perusal of the settlement dated 02.11.1992, it is found that in para 1(iii), the party no.1 has agreed to protect the wages of the loaders converted to time rated or monthly rated. There is no specification in that paragraph that the same will apply only to cases covered under para 1(ii). On plain reading of the paragraphs 1(i) to 1(iii), it is found that there is nothing in the same to show that para 1(iii) has no application to the cases of para 1(i), directly or by implication. Hence, I find no force in the submission made by the party No.1 in that respect.

12. So far the modified settlement dated 31.10.1995 is concerned, on perusal of the same, it is found that in para 5, provision has been made to protect the wages of the loader converted to time rated or monthly rated category under certain circumstances. Paragraph 5 of the said settlement reads as follow:-

“Such piece rated workman who may put in time rated/ monthly rated in future by managerial decisions i.e. without seeking option from time rated/ monthly rated or without going through the selection process against internal notification from time rated/ monthly rated, will continue to get protection of piece rated wages such piece rated workmen who came to TR as per option given by them will not get this benefit.”

13. The party No.1 has taken the plea of inordinate delay in raising the dispute. In this regard, it is well settled that though the court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In case of delay, no formula of universal application can be laid down and it would depend upon the facts and circumstances of each case. The Court dealing with the reference will have to hold an enquiry and record its finding on the question whether the reference should be dismissed on the ground of delay. In appropriate cases, the Court may mould the relief either by reducing the back wages or by denying it completely.

On perusal of the record, it is found that there was much delay in raising the dispute and no explanation has been furnished by the workman or union for the delay in raising the dispute. However, it is not the case of the Party No. 1 that the delay is fatal to it, as because the delay has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It is also pleaded by the Party No. 1 that due to the delay in raising the dispute caused any prejudice to it. Hence, it is not a fit case to dismiss the reference on the ground of delay. However, the delay in raising the dispute will be taken into consideration while granting relief if any to the workman.

14. As in this case, it has already been held that the workman did not give any option for his conversion and the conversion was made by party no.1 by an administrative order and the same is a managerial decision, the workman is entitled for protection of the basic wages and SPRA of loader.

15. At this juncture, I think it proper to mention about the decision of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, and Nagpur in W.P. No. 476 of 2014 (Keshav Vs Senior Manager (Mine), Saoner Mine No. 1) in regard to protection of wages of the workmen. Taking into consideration the delay in raising the dispute, the Hon'ble High Court granted the benefit of pay protection to the concerned workmen, only from the period of 3 years prior to filing of petition before the Hon'ble Court.

16. Admittedly, there is unexplained delay of about 11 years in raising the dispute. Taking in to consideration such delay in raising the dispute and applying the principles enunciated by the Hon'ble High Court, Nagpur Bench in Writ petition No.476/2014 to the case in hand, I think it proper to give the benefit of protection of wages to the workman from the preceding three years of raising of the dispute by the workman before the Conciliation Officer-cum Assistant Labour Commissioner (Central), Chandrapur. Accordingly, the workman is entitled for the differential of wages of Loader and general mazdoor category I, from the preceding three years of the date of raising of the dispute before the Conciliation Officer and not from the date of his transfer to Majri Area, as claimed by him. The workman is also entitled to consequential benefits arising out of such pay protection. Hence it is ordered:-

ORDER

The action of the management of Majri Area/Wani Area of WCL in denying pay/wages protection to Shri Babulal Dhelba at the time of conversion from Piece Rated to Time Rated workers as per Tripartite settlement dated 02.11.1992 & Modification dated 31.10.1995 is illegal and unjustified.

The workman is entitled for the benefit of protection of wages from the preceding three years of the date of raising of the dispute before the Conciliation Officer-cum Assistant Labour Commissioner (Central), Chandrapur. Accordingly, the workman is entitled for the differential of wages of Loader and general mazdoor category I, from the preceding three years of the date of raising of the dispute before the Conciliation Officer and not from the date of his transfer to Majri Area, as claimed by him. The workman is also entitled to consequential benefits arising out of such pay protection. The Party No. 1 is directed to pay the arrears of the differential of wages of Loader and General Mazdoor, Category-I to the workman within one month of the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2014

का.आ. 2504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 22/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 08-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/33/1992-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 8th September, 2014

S.O. 2504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of SCCL, and their workmen, received by the Central Government on 08-09-2014.

[No. L-22012/33/1992-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-I, HYDERABAD

Present : SRIV. RAVIKUMAR,
B.Sc., LL.M., Chairman (FAC).

I.D. No. 22/1992

Dated 27th day of March, 2014.

BETWEEN

Sri K. Komaraiah,
S/o Sri Raja Narasimha,
H.No.7/92/995, Ramakrishna purma area,
Division-I, Adilabad.Petitioner

AND

The General Manager,
Singarani Collieries Company Limited,
Ramakrishna purma, Adilabad.Respondent

This Industrial Dispute coming up for hearing on 27.03.2014 in the presence of Sri. P.A.V.V. Sharma, Advocate for the Respondent, none of appeared for the petitioner after remind having stool over the same for consideration, this court passed the following:

AWARD

The Central Government of India, Ministry of Labour referred Industrial Dispute to this Tribunal for adjudication of the issues as follows :-

- Whether the action of the Management of M/s. Singareni Collieries Company Limited, Ramakrishna puram in dismissing the services of Sri K. Komaraiah, Coal Filler, MK4 is legal and justified ?
- If not to what relief the concerned workman is entitled ?
- After receiving the reference this Tribunal registered as I.D. No. 22/1992 and notices were issued to both parties. Both the parties appeared and engaged their counsels. Both parties filed their respective pleadings. Before final arguments both parties disputed the Domestic

Enquiry and examined witnesses and marked Exs.M1 to M10. Subsequently this Tribunal decided the Domestic Enquiry against the Respondent and in favour of the petitioner / workman vide order dated 15.02.1995.

3. Against the order the Respondent filed Writ Petition No.139/1996 before the Hon'ble High Court and the said Writ Petition was allowed on 01.11.2012. After receiving the Hon'ble High Court order and in view of old case this Tribunal again issued notices to both the parties. On behalf of Respondent Sri. P.A.V.V. Sharma, Advocate filed Vakalat and the notice of petitioner returned un-served "NO SUCH PERSON". Again this Tribunal issued fresh notice to the counsel on record and the same also returned "NO SUCH PERSON". This Tribunal ordered publication in Eenadu at Mandhamari area, Adilabad District for appearance of petitioner by 24.06.2013. As per the Docket proceedings from time to time the matter is posted for appearance of petitioner from 24.06.2013 to 03.03.2014. On 03.03.2014 petitioner called absent, no representation, it appears Petitioner has no interest to pursue the case as finally posted to 27.03.2014.

On 27.03.2014 also petitioner called absent, no representation, petition is dismissed. NIL Award is passed accordingly.

Given under my hand and the seal of this Court on this the 27th day of March, 2014

V. RAVI KUMAR, Chairman (FAC)

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 68/09) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-09-2014 को प्राप्त हुआ था।

[सं. एल-12011/05/2009-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 01/09/2014.

[No. L-12011/05/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/68/09

PRESIDING OFFICER : SHRI R.B.PATLE

General Secretary,
Mrithya Karmachari Parivar Kalyan Parishad,
F-1, Tripti Vihar, Opp. Engg. College,
Ujjain.....Workman/Union

Versus

Managing Director,
State Bank of India, Central Office,
Madam Cama Marg,
Mumbai-21

....Management

AWARD

Passed on this 28th day of July 2014

1. As per letter dated 3-7-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/05/2009-IR(B-I). The dispute under reference relates to:

"Whether the action of the Dy.General Manager, State Bank of India, Zonal office, Gwalior in not providing compassionate appointment to Smt. Alka Kadam after the death of her husband is justified? If not, to what relief Smt. Alka Kadam is entitled to get?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/6. The case of Ist party dependent of the workman is that her husband Shri Jaishivrao Kadam was appointed as peon on 26-2-1981. He rendered his services with devotion. Her husband died of cancer on 30-10-03 at the age of 42 years. The deceased left his widow Alka-40 years, son Arun is 20 years old, second son Pankaj is 16 years, daughter Sangeeta is 14 years and son Rinku is 12 years as his dependent. After death of her husband, amount of Rs. M.W.S.Scheme Rs.10,000 Gratuity Rs. 96,711/-, Provident Fund 2,21,133 Society Rs. 1,00,000/-, Gratuity Difference- Rs.11,243/- & Provident Fund difference Rs. 1,171/-. Total Rs. 4,40,258/- were received by the widow after deducting consumer loan Rs. 16,285/-, house Loan Rs. 2,51,033/-, additional loan 50,505/-, society loan 77,083/-. Total loan Rs.3,94,906/- balance amount Rs. 45,352/- was paid to the widow. The widow was sanctioned pension of Rs. 2578.

3. It is submitted that applicant has to maintain her sons and daughter. The pension amount is not sufficient

for her family needs. She prays for her appointment on compassionate ground. IInd party has refused employment on compassionate ground showing artificial income of the family. Ist party dependent of the deceased has no other source except the pension amount. On such ground, she prays for appointment on compassionate ground.

4. IInd party filed Written Statement at Page 5/1 to 5/8. Preliminary objection is raised by IInd party that the widow cannot be covered as workman under Section 2(s) of I.D.Act, the dispute is not covered under Section 2-k of I.D.Act. Therefore the reference is not tenable. On merit, IInd party submits that scheme has been framed by Bank for appointment on compassionate ground to the dependents of employee died in harness. The object of the said scheme for grant of appointment on compassionate ground is to enable the family to tide over the sudden crises due to the death of employee. The details of the factors to be considered are provided – family pension, gratuity amount received, employees contribution to Provident Fund, any compensation paid by the Bank or its welfare fund, proceeds of LIC policies and other investments of the deceased employees, income of the family from other sources, income of other family members from employment and size of the family and liabilities. IInd party has also given details of the amount paid to the widow after adjusting loan amount. Amount of Rs. 45,352/- was paid to the family at the rate of 6 % per annum would be Rs.181/- per month. The deceased was receiving gross salary Rs. 8600/-, take home salary is Rs. 3358/-. Widow is sanctioned pension of Rs. 2578/-. The income of family is Rs. 2959/-. The family consisting of 6 members at time of death of the employee was receiving take home salary Rs. 3358/-. Family has house worth Rs. 5 lakh. Ist party widow cannot be said in penurious condition. IInd party submits that claim for compassionate appointment is rejected after considering all those factors. Ist party is not entitled to appointment on compassionate grounds.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the Dy. General Manager, State Bank of India, Zonal office, Gwalior in not providing compassionate appointment to Smt. Alka Kadam after the death of her husband is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Dependent is not entitled to relief claimed. |

REASONS

6. Claim under reference relates to rejection of appointment on compassionate ground of widow of deceased. The documents are admitted. Exhibit W-1 is death certificate of Shri Jaishivrao kadam. The date of birth is shown 30-10-03. Exhibit W-2 is copy of pass book of SBI Account. The balance is shown Rs. 7580.48 on 15-6-04. The pension amount is credited Rs. 2578/- on 31-5-04. Exhibit W-3 is application submitted by widow Alka for appointment on compassionate ground. W-7 is application submitted to ALC giving details of the family. Amount received from different sources, loan amount adjusted and balance Rs.45352 was paid to the widow. The pension of Rs.2578/- was received by the widow. Exhibit W-8 is copy of application submitted to ALC, Bhopal giving all details. Management produced documents Exhibit m-1. The details of the amount paid to the widow, the pension amount, income of Rs.200/- per month from M.W.S.Scheme. The detailed calculations are submitted at Exhibit M-2. Exhibit M-3 is letter initiating claim of appointment of compassionate ground. Parties are not in dispute about the amount received by widow on different heads and loan amount adjusted.

7. Widow Alka in her affidavit of evidence has stated all those facts supported by documents. In her cross-examination, Alka says she has received education upto 10th standard. Her family consist of 3 sons and daughter and himself. Her elder son is of 25 years, 2nd son is of 22 years and 3rd son is of 18 years of age and daughter is of 20 years of age. One of her son is doing private work. That after death of her husband, amount about Rs. 4 lakh was received. Pension was received Rs. 3500/-. She had submitted application for appointment on compassionate ground of her elder son Arun. Her husband died on 3-10-03. Her son was doing private job and gets Rs. 2500/- to Rs.3000/- per month. Her husband was getting gross amount Rs. 8000/-.

8. Management's witness Shri T. K. Joshi has given the amount paid to widow. Loan amount adjusted from it and balance amount Rs. 45352/- was paid to the widow. The widow is sanctioned pension Rs. 2578/-. The income of the family is assessed Rs.2959/-. Last salary of deceased was Rs. 8600/-. Deduction of Rs. 3358/- were made from it. Take home salary of deceased was Rs. 3358/-. Management's witness in his cross-examination says he had not inspected the financial condition of the family. If evidence of Alka in cross-examination is considered, she gets pension Rs.3500/-. Her son is getting income Rs. 2500-3000 per month. Entire loan is recovered from the amount received after death of his husband. Family is free from any kind of loan. The copy of the scheme is produced at Exhibit M-6. The factors and financial condition of family

to be considered are shown in it. The widow has received amount of Provident Fund, Gratuity and other benefits. She is also receiving pension. Her son is working. Therefore rejection of claim for appointment on compassionate ground appears proper.

9. Learned counsel for IInd party Mr. Shrotri relies on catin of cases.

In case of State Bank of India and another versus Jaspal Kaur reported in 2007(9)SSC 571, their Lordship held whether deceased left the family in penury and without any means of livelihood to be decided by competent authority. Factors to be taken into account for assessing financial condition. Court should not normally interfere with the decision of the authority. Their Lordship considered Penury means compassionate appointment cannot be claimed by way of right, nor public office is heritable.

In case of Umesh Kumar Nagpal versus State of Haryana and others reported in 1994(4) Supreme Court cases 138. Their Lordship dealing with object of compassionate appointment held it is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment. Their Lordship dealing with the necessary factors for being taken into account before offering held mere death of an employee doesnot entitle his family to compassionate appointment. The authority must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employees death.

In case of State Bank of India and another versus Somvir singh reported in 2007(4) Supreme Court cases 778. Their Lordship dealing with compassionate appointment scheme for dependants of employees dying in harness held factors to be considered for determining financial condition. Income of the family from all sources to be assessed. Penury doesnot comprehend mere financial hardship.

10. Ratio held in all those cases supports arguments advanced by Shri Shrotri for IInd party. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the Dy.General Manager, State Bank of India, Zonal office, Gwalior in not providing compassionate appointment to Smt. Alka Kadam after the death of her husband is proper and legal.
- (2) Ist party, widow of deceased employee is not entitled to relief claimed by her.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 51/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-41011/15/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 51/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 12/09/2014.

[No. L-41011/15/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 3rd September, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 51/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Southern Railway and their workman)

BETWEEN

The Divisional Secretary	: 1st Party/
All India Loco Running Staff	Petitioner Union
Association, 116-D,	
Railway Colony, Erode-2	

AND

- | | |
|----------------------------------|----------------|
| 1. The Divisional Railway | : 2nd Party/ |
| Manager, Southern Railway, | 1st Respondent |
| Salem Division, Salem | |
| 2. The Sr. Divisional Electrical | : 2nd Party/ |
| Engineer (TRD) | 2nd Respondent |
| Salem Division, | |
| Southern Railway, Salem | |
| 3. The Chief Crew Controller | : 2nd Party/ |
| Crew Booking Officer | 3rd Respondent |
| Southern Railway, Salem | |

Appearance:

For the 1st Party/ : Sri DSM Augustus Babu,
Petitioner Authorized Representative

For the 2nd Party/ : M/s K. Muthamil Raja,
Respondents Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-41011/15/2013-IR (B-I) dated 25.04.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Railway Management, Sr. Divisional Electrical Engineer (TRD), Salem Division, Southern Railway, Salem in respect of marking absent and not making payment for April and May 2012 to Sri N. Balamurugan, Asstt. Loco Pilot is justified or not? If not, to what relief is the workman entitled?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 51/2013 and issued notices to both sides. The petitioner has entered appeared through his Authorized Representative and the Respondent through its counsel and have filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement are as below:

The petitioner is a union registered under the Trade Union Act. N. Balamurugan is an active member of the Petitioner Union and is working as Sr. Asstt. Loco Pilot at Erode under the supervision and control of the Third Respondent in the management of First and Second Respondents. In the course of his performance, Balamurugan was required to shoulder higher responsibility on oral order. He expressed his inability to work temporarily on domestic reasons. He wanted 30 days leave to settle his family encumbrances but this was not accepted by the Second Respondent. The Third Respondent who is directly controlling the workman did not assign any duty to Balamurugan though he turned up at the office every day. He was marked absent in the muster roll from 02.04.2012. He was willfully kept off from his normal duties and was deprived of his salary for the months of April, May and June unlawfully. Balamurugan has received his Privilege Ticket Order on 05.04.2012. He has also received his consumable materials during the period marked absent. Balamurugan has affixed his signature in the office register maintained at the office for reporting for duty. An order may be passed directing the management to pay wages due to Balamurugan.

4. The Respondent has filed Counter Statement contending as follows:

The reference by the Ministry of Labour is for adjudication of the alleged denial of pay for the months April and May 2012. However, in the Claim Statement the petitioner has claimed salary for the month of June also. Balamurugan was appointed as Asstt. Loco Pilot in Palghat Division of Southern Railway in the year 2004. He was promoted as Sr. Asstt. Loco Pilot w.e.f. 01.05.2010. As Sr. Asstt. Loco Pilot he belongs to Loco Running Cadre. The posts in the cadre are classified as Safety Posts. There was acute shortage of staff in the Salem Division after the division was formed. In spite of this, the petitioner has been granted leave of 19 days in the year 2010, 42 days in the year 2011 and 6 days till 02.04.2012 in the year 2012. Erode Crew Booking Centre used to book average 177 sets of crews to work the trains but the number of Sr. Asstt. Loco Pilots available were only 333. So the request of Balamurugan for long leave from 02.04.2012 to 02.05.2012 was rejected by the Controlling Authority on 09.04.2012 and this position was exhibited in the notice board of Crew Booking Centre, Erode. But Balamurugan continued to remain absent from duty from 02.04.2012. Unauthorized absence from duty is a misconduct as per Railway Services (Conduct) Rules. Due to absence of Balamurugan a Charge memorandum was issued to him and a penalty of reduction of pay to one lower stage was imposed on him. Balamurugan had already undergone training and completed the promotional course. Order dated 10.02.2012 had been issued to him alongwith others to officiate as Loco Pilot but he refused to attend work in spite of the call given to him on 01.04.2012 to officiate as Loco Pilot at Erode. He was called again on 03.04.2012 but still he did not obey the instruction. He continued to be absent from duty unauthorizedly. Staff are supposed to sign CMS Register only after receiving a Train Order. Balamurugan has signed the above register without any Train Order or authorization of Train Order. Balamurugan having absented from duty unauthorizedly he is not entitled to salary for the period.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and also documents marked as Ext.W1 to Ext.W23 and Ext.M1 to Ext.M13.

6. The points for consideration are :

- (i) Whether the action of the management in denying salary to Balamurugan during April and May 2012 is justifiable?
- (ii) What, if any, is the relief to which the workman is entitled?

The Points

7. Balamurugan on whose behalf the dispute is raised by the petitioner had entered the service of the Respondent as Asstt. Loco Pilot in the year 2004. He had come under Salem Division after the division was formed in 2007. He was promoted as Sr. Asstt. Loco Pilot w.e.f. 01.05.2010.

8. The dispute is in respect of the denial of salary to Balamurugan for the months April and May 2012. Though in the Claim Statement he has requested for salary for the month of June 2012 for which month also he is said to have been denied salary. This could not be considered by the Tribunal since it is not the subject matter of reference.

9. Ext.M7 is the office order dated 10.02.2012 issued to Balamurugan alongwith others who officiate as Loco Pilot/Shunting Grade-II. This order seems to have been issued due to acute shortage of Loco Pilot staff in Salem Division during the period. Balamurugan had already undergone training and completed the promotional course and certified fit to work as Loco Pilot before Ext.M7 order was issued. The application given by Balamurugan requesting for leave for one month from 02.04.2012 to 02.05.2012 was rejected by the Controlling Authority. Ext.M1 is the leave application of Balamurugan and Ext.M2 is the notice exhibited in the Notice Board showing rejection of the leave application. Balamurugan was served with a call to take learning road to officiate as Loco Pilot/Shunting at Erode on 01.04.2012 but he refused to do so and made an endorsement in the Call Book. The page of the Call Book containing the entry of Balamurugan is marked as Ext.M8. Another call was made to him on 03.04.2012 and still he refused to take the learning road. Ext.M9 is the copy of the entry in the Call Book regarding this. He continued to be absent from duty after this.

10. It is not in dispute that a leave application was given by Balamurugan but this was rejected by the concerned authority and notice of this was published in the Notice Board. It is also not in dispute that in spite of the refusal Balamurugan who was served with call to take learning road refused to do so on two occasions. He continued to be absent from duty though his application for leave was rejected. On account of this misconduct the Respondent seems to have initiated proceedings against Balamurugan and reduced his pay to a lower stage.

11. The argument that is advanced on behalf of the concerned worker Balamurugan is that he had submitted an application for leave and there was sufficient reason for his taking leave and this should not have been rejected. According to the Authorized Representative, the relevant rules permit the worker to take leave. It is also argued by the Authorized Representative that even though Balamurugan did not attend duty as Loco Pilot (Shunting), he had been presenting himself at the office and had been signing the Attendance Register also but he was not assigned any duty by the office. According to the Authorized Representative, Balamurugan was actually not on unauthorized absence. He was denied his normal work by the Management since he was not willing to work as Loco Pilot.

12. According to the Respondent, the workman concerned had applied for leave only one day in advance and the circumstances did not permit the Management to accede to the request of the worker to allow his leave application. Ext.M1 the leave application reveal that it is dated 01.04.2012 and Balamurugan was asking for leave from 02.04.2012 to 02.05.2012. What is stated in the application is that due to unexpected family problems arising in the family, he may be granted leave. As seen from Ext.M2 the rejection of leave application was published in the Notice Board. There is no case for the petitioner that this was not done.

13. The Authorized Representative has referred to Note-1 of Rule-224 of Indian Railway Establishment Manual which according to him would show that there was every justification for Balamurugan in seeking leave. Rule-224 is concerned with the steps to be taken on refusal by an employee on promotion. It provides for debarring for future promotion for a particular period if an employee refuses promotion. Note-1 to the Rule states that the administration can entertain request from employee for postponement of promotion for very short period on account of grave domestic difficulties and other humanitarian considerations. According to the Authorized Representative this note applies to the case of Balamurugan. In fact, the note is not applicable to the present case at all. Balamurugan had not requested for postponement of promotion. He had already been given direction to officiate as Loco Pilot by order dated 10.02.2012. The application by Balamurugan was not for postponement of promotion but only for leave.

14. It could be seen from the leave application that there was no justification for seeking leave also. The post in the cadre of Loco Running Staff are classified as Safety Posts. Application for leave should have been given in advance. As could be seen from Ext.M1 Balamurugan did not specify the reason for his taking leave except stating that he is having family problems. In the claim statement what he has stated is that he wanted leave to complete and settle his family encumbrance. However, his case in the Proof Affidavit filed by him is that his mother was critically ill and he was required to visit his mother frequently. He has further stated that financial help was required for his mother's treatment. As could be seen, this case of illness of his mother is coming only during evidence before this Court. What is stated in the notes of argument submitted on behalf of the petitioner is that the concerned workman would have earned more by way of allowance of mileage as Sr. Asstt. Loco Pilot than if working as Loco Pilot (Shunter) and he could have used this to meet the extra expenditure for treating his mother. Thus, the cat has come out of the bag and the reason for refusal to work as Loco Pilot (Shunting) seems to be the more attractive work as Asstt. Loco Pilot which would have given more earning by way of allowance. It is

very much clear that the concerned worker has refused to do the work that was allotted to him. He must have been very much aware of the shortage in the Loco Section and yet he had absented himself from duty on the pretext of a leave application given by him which was subsequently rejected. Being a worker coming under the classification of Safety Posts, the concerned worker should have given his application for leave in advance. Apart from this, he could have remained absent from duty only after his leave application was allowed. He continued to be absent from duty even after the application was rejected and he came to be aware of it.

15. The contention raised on behalf of the concerned worker that though he did not attend duty as Loco Pilot (Shunting), he was attending the office and so could not be considered as absent also could not be accepted. He seems to have been signing CMS Register even though he was absenting from duty. MW1, the Chief Crew Controller of Salem Division has stated that CMS Register is for home station crew and is not meant for reporting office for duty. The staff are supposed to sign CMS Register only after receiving a Train Order, he has stated. After Train Ordering CMS (Crew Management System) staff approves the Train Order only the staff are to sign on CMS Kiosk. Duty of the running staff commences when he signs on CMS Kiosk. MW1 has stated that signing of the register by Balamurugan was an unauthorized act and he was imposed with the penalty of withholding of an increment for his misconduct. The penalty advice is marked as Ext.M10. In fact the concerned worker himself has admitted during his cross-examination that only after allotment of work, an employee can sign CMS Register. His stand during cross-examination is that only to prove his presence he has signed the register though he was not allotted work.

16. Rule-503 of Indian Railway Establishment Code states that leave cannot be claimed as a right and leave of any kind may be refused or revoked by the authority. The Railway does not permit a Railway Servant to be absent from duty without permission of his superior or alter his appointed hours of attendance or exchange duty with any other Railway Servant or leave his charge of duty unless properly relieved. It is very much clear that the concerned worker had defied the authority and had refused to be on duty in spite of the rejection of his application of his leave. So there is no justification in his seeking salary for the period during his absence. He is not entitled to any relief.

17. The reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd September, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ : WW1, Sri G. Subramanian
Petitioner : WW2, Sri N. Balamurugan

For the 2nd Party/ : MW1, Sri G. Gunaseelan
1st, 2nd &
3rd Management

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	28.04.2012	Representation to ALC (C), Madurai
Ex.W2	21.02.2013	Failure report submitted by ALC(C), Madurai
Ex.W3	04.07.2012	Letter issued by DPO/SA
Ex.W4	10.02.2012	Officiating Order
Ex.W5	20.02.2012	Representation submitted by workman
Ex.W6	02.04.2012	Workman to CCRC/O/ED
Ex.W7	03.04.2012	Representation to Sr. DEE/SA, DRM/SA & DPO/SA
Ex.W8	01.04.2012	Leave letter submitted by workman
Ex.W9	27.04.2012	Telegram message given to DRM/SA and ALC (C)/MDU
Ex.W10	28.05.2012	Proceedings of ALC (C)/MDU
Ex.W11	16.05.2012	Representation to DRM/SPA
Ex.W12	15.06.2012	Representation to LEO/CBE
Ex.W13	-	Copy of pay slip
Ex.W14	04.06.2012	Promotion order as LP/GOODS
Ex.W15	05.04.2012	Supply of one set PTO
Ex.W16	09.04.2012	
	15.05.2012	Extract of Register
	27.06.2012	
Ex.W17	02.06.2012	Copy of charge memorandum
Ex.W18	19.06.2012	Reply to charge memorandum
Ex.W19	14.07.2012	Penalty advice
Ex.W20	21.08.2012	Demotion order
Ex.W21	03.07.2012	Letter issued by DPO
Ex.W22	06.07.2012	Letter given by workman
Ex.W23	04.04.2012-	Copy of the Spare
	30.06.2012	Register

On the Management's side

Ex.No.	Date	Description
Ex.M1	01.04.2012	Leave application of the 1st Party
Ex.M2	12.04.2012	Notice exhibited in the notice board
Ex.M3	01.04.2012	Crew Sign on Details
	To	
	30.04.2012	
Ex.M4	April-May	Extract of Muster Roll
Ex.M5	31.05.2012	Report of CCRC/ED to ADEE/OP/ED regarding unauthorized absence of 1st Party
Ex.M6	14.07.2012	Penalty Advice
Ex.M7	10.02.2012	Office Order No. SA/12/2012/Run Officiating 1st party for the post of Loco Pilot/Shunting Gr.II
Ex.M8	01.04.2012	Call book entries
Ex.M9	03.04.2012	Call book entries
Ex.M10	19.08.2009	Earlier Penalty Advice to the 1st Party
Ex.M11	-	Rules applying to Railway Servants Generally
Ex.M12	-	Indian Railway Establishment Code Vol.I
Ex.M13	-	General Rules of Railway Servant

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 44/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-12012/62/2010-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2507.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 12/09/2014.

[No. L-12012/62/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Tuesday, the 2nd September, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 44/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri V. Anbalagan : 1st Party/Petitioner

AND

1. The Deputy General Manager : 2nd Party/
Appellate Authority 1st Respondent
State Bank of India Zonal Office
Mc Donalds Road
Tiruchirapalli-620001

2. The Asstt. General Manager : 2nd Party/
(Operations) 2nd Respondent
Disciplinary Authority
State Bank of India,
Zonal Office
Mc. Donalds Road
Tiruchirapalli-620001

Appearance :

For the 1st Party/ : M/s Balan Haridas,
Petitioner Advocates

For the 2nd Party/ : M/s T.S. Gopalan & Co.,
Respondents Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/62/2010-IR (B-I) dated 23.05.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of State Bank of India, Thiruchirapalli in imposing the punishment of removal from service w.e.f. 08.02.2008 on Sri V. Anbalagan, Ex-Deputy Head Assistant (Cash) is legal and justified? To what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 44/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the Respondent Bank as Cashier in the year 1981. From the year 1999 the petitioner was working in Gingee branch. During the year 2003, he was assigned the duty of Deputy Head Assistant (Cash). The petitioner was placed under suspension on 02.08.2003 making certain allegations against him. The Respondent issued a Charge Memo to the petitioner. He gave explanation denying the charges. In spite of this, domestic enquiry was ordered against the petitioner. Out of the 8 charges leveled against the petitioner, the Enquiry Officer held that charges 1 to 4 are not proved and charges 5 to 8 are proved. The Disciplinary Authority disagreed with the findings of the Enquiry Officer in respect of charge nos. 1 to 4 and held that charges 1, 2 and 4 are proved and charge no. 3 is proved partly also. The reasons given by the Disciplinary Authority while disagreeing with the findings of the Enquiry Officer are contrary to evidence on records and perverse to the core. The Disciplinary Authority had disagreed with the findings of the Enquiry Officer as he was aware that major penalty cannot be imposed in respect of charges 5 to 8. The petitioner had not committed the offences alleged. The allegation that on conducting intra-day cash verification on 28.07.2003, a sum of Rs. 30,000 was found in excess in the petitioner's cash receipt counter is false. The other connected charges are also false. So also the charge that the petitioner made intimidating remarks against an Assistant Head Cashier, that he behaved in an indecent and riotous manner to the Deputy Manager are also false. The return of cheques issued by the petitioner referred to in charges 6 and 7 had nothing to do with the employment of the petitioner and cannot be the subject matter of any disciplinary proceedings. Charges 6 to 8 are to be ignored. An order may be passed setting aside the order of the Second Respondent, the Disciplinary Authority and directing the Respondents to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

While the petitioner was working in Gingee branch as Deputy Head Asstt. (Cash) he committed certain irregularities and a charge sheet was issued to him on 10.04.2004. The 1st charge against him is that on 28.07.2003, while conducting intra-day cash verification in the cash counters, Rs. 30,000 was found in excess in the cash receipt counter of the petitioner. The 2nd charge is that on the same day on completion of intra-day cash verification, he refused to sign the report of cash verification even though required by the Deputy Manager (Cash) and this amounts to disobedience of lawful and reasonable order of the superior. The 3rd charge is that on the same day he had

surreptitiously replaced Rs. 500 notes with Rs. 100 notes while delivering amount to the customer Tarzan thus resulting in cash shortage of Rs. 20,000. The 4th charge is that on 02.08.2003 the petitioner made intimidating remarks to the Asstt. Head Cashier. On the same day he behaved in an indecent and riotous manner to the Deputy Manager. The petitioner had issued cheques without maintaining sufficient balance in the Savings Account and the cheques have been returned for want of sufficient funds. As per the 8th charge the petitioner has resorted to outside borrowings. The reply given by the petitioner in the charge memo was not satisfactory and an enquiry was conducted on the charges. The Enquiry Officer held that charges 1 to 4 are not proved whereas charges 5 to 8 are proved. The Disciplinary Authority who considered the report did not agree with the findings of the Enquiry Officer and held that charges 1, 2 and 4 are proved and charge 3 is partly proved. The Disciplinary Authority imposed the punishment of removal from service with superannuation benefits on the petitioner. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M32.

6. The points for consideration are:

- (i) Whether the action of the Respondent in imposing the punishment of removal from service on the petitioner is justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

7. The alleged incidents resulting in the laying of the charge against the petitioner occurred while he was assigned the duty of Head Asstt. (Cash) and was working as such in Gingee Branch of the Respondent. On 28.07.2003 one Tarzan, a customer of the bank had withdrawn Rs. 2,00,000 from the bank. Though the cash was disbursed by another staff who was examined as PW4 in the enquiry proceedings, the petitioner is said to have obtained the cash from the customer counted it at the counting machine and returned it to the customer. The customer is said to have come back to the branch after more than an hour stating that there was a mix up of Rs. 100 notes in one of the sections of Rs. 500 and the cash he has obtained is short of Rs. 20,000. The Manager of the Bank in consultation with the Officer decided to conduct intra-day cash verification in all the cash counters. According to the Management, on such verification, excess amount of Rs. 30,000 was found at the counter of the petitioner. Even though the Officer who conducted the verification had collected this amount also from the counter the petitioner is said to have snatched away this amount from

him. On the basis of intra-day cash verification it is alleged that excess cash was found in the counter of the petitioner. According to the Management, the petitioner refused to sign the report of intra-day cash verification done on 28.07.2003. The first charge is on account of the alleged excess amount found at the counter and the second charge is on account of refusal of the petitioner to sign the report of intra-day cash verification. The third charge is that the petitioner had replaced Rs. 500 notes with Rs. 100 notes while counting the cash that was delivered to Tarzan and it is on account of this shortage had occurred in the cash received by Tarzan. The incidents relating to charges 4 and 5 are said to have occurred on 02.08.2003. On this date, by 1000 AM the petitioner is said to have made intimidating remarks on PW4 in the enquiry proceedings. The remarks allegedly made are reproduced in Tamil in the charge memo. The fifth charge is that on 02.08.2003 itself at noon the petitioner had behaved in an indecent and riotous manner towards PW3, the Deputy Manager allegedly because he was a witness of the incident of 28.07.2003. Charges 6 to 8 are in respect of issue of cheques by the petitioner without sufficient balance in his accounts return of the cheques for insufficient funds and borrowings allegedly made by the petitioner, assumed on the basis of bouncing of the cheques.

7. In the enquiry proceedings, the Management had examined PW1 Kannuswamy who had conducted intra-day cash verification at the counter of the petitioner, PW2 Edwin who was a witness to the same, PW3 to whom the petitioner had allegedly behaved in a riotous manner on 02.08.2003, PW4 who disbursed amount to customer Tarzan, PW5 another staff who was also in one of the counters on 28.07.2003 and PW7 the Branch Manager. Though the name of MW6 is also given, this witness is not seen examined. On the side of the petitioner, those examined are the Security Officer and the Messenger of the Branch.

8. Charge Nos. 1 and 2 can be considered together. These are in respect of excess cash allegedly found at the counter of the petitioner on intra-day cash verification and the alleged refusal of the petitioner to sign the verification report. The decision for the cash verification was taken on the basis of the oral complaint by the customer that the cash received by him after counting was short of Rs. 20,000.

9. The Enquiry Officer has found that Charge Nos. 1 and 2 and also Charge Nos. 3 to 5 are not proved. However, the Disciplinary Authority had entered a dissenting note and had found that Charge Nos. 1 and 2 are proved. He found that Charge Nos. 4 and 5 also are proved and Charge No. 3 is partly proved. The reason given by the Enquiry Officer to enter a finding regarding Charge No. 1 against the Management is that PW1 has signed in CSE Receipt and Delivery Book after balancing the cash According to

him, after signing in this one cannot say that there was excess cash of Rs. 30,000. He has stated that if there was no excess cash there was no misappropriation of bank money also. Regarding Charge No. 2 that the petitioner has refused to sign the cash verification report, the Enquiry Officer has found that the report was typed not on 28.07.2003, the date on which cash verification was done but on 29.07.2003. According to him the petitioner has refused to sign the report since it showed excess cash of Rs. 30,000 to that of the original figures which was acknowledged by PW1.

10. The Disciplinary Authority on analyzing the evidence of the witnesses who gave evidence regarding the cash verification has differed from the finding of the Enquiry Officer and has found that there was excess cash at the counter of the petitioner. Based on their evidence he has found Charge No. 2 also against the petitioner.

11. The evidence given by the witnesses should be analyzed to find out if there is any perversity in the finding entered by the Enquiry Officer and whether there was any justification in the Disciplinary Authority entering a dissenting note and giving findings against the petitioner. PW1, the first witness has spoken as to how he happened to do the intra-day cash verification at the counter of the petitioner. He had seen the customer Tarzan holding the cash that was delivered by PW4, Lata, the Cashier by 1100 AM. By 1200 noon the Branch Manager had called him to his room and the customer Tarzan was also present there. The customer seems to have gone to the Branch Manager and showed the Manager a section in which notes of Rs. 100 and Rs. 500 denominations were mixed. The matter was reported to the Zonal Office and they were instructed to conduct intra-day cash verification. The verification at the counter of PW4 and petitioner were done by PW1. PW2 had been witness to this Verification of the counter of one Sundararajan was done by PW3. PW1 has deposed that on verification when notes were taken out, Rs. 100 sections were found over the counter and he had asked the petitioner about this. He replied that it is his personal cash. PW1 enquired him if he is not aware that he is not supposed to keep personal cash at the counter. The petitioner spoke in an arrogant manner. PW1 came out carrying all the cash including the three Rs. 100 sections found over the counter. The petitioner who was outside took away the three sections of Rs. 100 from the tray of notes carried by PW1. While PW1 was counting the notes through the machine at the centre table he asked the petitioner to return the Rs. 100 sections. He refused to hand over the notes. PW1 again told him that if the notes are given he can sign them and keep them inside, but still he refused. PW1 reported to the Manager that the petitioner did not hand over the three sections. There is the evidence

given by PW2 who had witnessed the verification also, regarding this. He has asserted that when PW1 did the verification at the counter of the petitioner three sections of Rs. 100/- notes were found in one corner of the counter, that since the petitioner refused to hand it over, PW1 had collected those notes also but those were taken away by the petitioner. There is also the evidence given by PW3 regarding the verification. However, PW3 is not a witness to the existence of the excess notes at the counter of the petitioner, he having been engaged in the verification at the counter of Sundararajan. PW4 has stated that her counter was also verified. Both PW1 as well as PW2 have stated that verification at the counter of PW4 was done first and then they have then proceeded to do verification of the counter of the petitioner. PW5 who was at the cash counter at the centre table has also stated about cash verification done by PW1. Her counter is next to that of the petitioner. It was from the counting machine at the centre table that the petitioner had counted the notes that were given to customer Tarzan. PW5 though not inside the counter of the petitioner at the time of verification has also witnessed the incident. She too had stated that there was excess cash at the time of verification and the petitioner had taken away the notes that were collected by PW1.

12. The Branch Manager examined as PW7, though not a witness to the verification itself, has direct knowledge of the incident. He has deposed that immediately after the petitioner had refused to hand over the cash to PW1 or to deposit in Sundry Deposit Account he had instructed the petitioner to put it in deposit. In fact he had left the cash department where he was, proceeded to the counter of the petitioner and had asked him to hand over the excess cash of Rs. 30,000/- found at his counter to deposit in the Sundry Deposit Account. But the petitioner had refused to do so.

13. From the discussion of the evidence PWs 1, 2, 5 and 7 it is very much clear that all these witnesses unanimously and consistently have stated that there was excess cash at the counter of the petitioner and in spite of instruction he has refused to deposit in Sundry Deposit Account. There is no reason to disbelieve the evidence of these witnesses given in unison. It is apparent from the evidence of these witnesses that other than PW5 all other witnesses were moving well with the petitioner. There is no case for the petitioner also that they have got any grudge against the petitioner. So it is unlikely that if not for the existence of excess notes at the counter of the petitioner, they would have given evidence to this effect against the petitioner.

14. It has come out in evidence that an Officer by name Parthasarathy has come to the Branch on the next day to investigate the matter. PW7 has stated that he had reported the incident to the authorities immediately. It was on

account of this investigation was done on the next day. This also probabalizes the case that excess cash was found at the counter of the petitioner.

15. The version given by the petitioner regarding the incident is also relevant in this respect. Ex.W1 is the complaint given by the petitioner to the Branch Manager on 02.08.2003. The complaint was given alleging that PW3 had assaulted him and abused him in filthy language on the said day. After referring to the complaint, the petitioner has referred to the incident that had taken place on 28.07.2003. He has stated that he is not connected with the incident which has taken place on the said day, that nothing had happened in his counter but they had asked him to sign a statement that an excess cash of Rs. 30,000/- was found at his counter and he had refused to sign. It is clear from Ext.W1 which is the first version given by the petitioner regarding the incident that the matter of excess cash of Rs. 30,000/- had come up on 28.07.2003 itself. Ext.W3 is the letter written by the petitioner to Asstt. General Manager, Trichy Region on 11.08.2003 in continuation of his earlier complaint seeking to take action against PW7, the Branch Manager and PW3, the Field Officer. In this he has stated that on 29.07.2003 Parthasarathy Officer of Neyveli Branch had been to the Branch for investigation. He has further stated in Ext.W3 that Parthasarathy had asked him about the complaint of excess cash of Rs. 30,000/- at his counter. This also makes it clear that on 28.07.2003 itself the petitioner was aware of the case that there was excess cash at his counter. When such abundant evidence was available, it was not proper on the part of the Enquiry Officer to enter a finding that there is no evidence of excess cash at the counter of the petitioner. The finding of the Enquiry Officer is in fact perverse when the above aspects are taken into account. Based on the evidence of the witnesses and the circumstances, the only conclusion that could have been arrived at was that there was excess cash at the counter of the petitioner. It was based on these aspects, the Disciplinary Authority has dissented from the findings of the Enquiry Officer and found that the charge is proved.

16. The second charge against the petitioner is that he refused to sign the report of intra-day cash verification and this amounts to disobedience of lawful and reasonable orders of the superior. The argument that has been advanced on behalf of the petitioner is that the report of intra-day cash verification was prepared subsequently and the petitioner was asked to sign the same on 30.07.2003 only. According to the counsel, the report was a false one and the report was not placed before the petitioner for signature immediately also. According to the counsel the petitioner was not bound to sign the report which was not a properly or lawfully prepared one. Only if the report was correct he was bound to sign the same. In fact it is in Ext.W3 the petitioner has put forth a case that he was

asked to sign the report on 30.07.2003 only. In Ext.W1 there is no such case for him. What he has stated in Ext.W1 is that he had nothing to do with the incident that have taken place on 28.07.2003, but he was asked to sign a statement regarding excess cash and he has refused to sign. In Ext.W1 there is no case for him that he was not asked to sign the same on 28.07.2003 but only on 30.07.2003. What one would think on reading Ext.W1 is that the report was placed before him on the same day and still he has refused to sign it.

17. During cross-examination of the witnesses much attempt seems to have been made to make out that the report was prepared subsequently and not on the same day. However, this attempt has not succeeded. There is no doubt that the petitioner was not asked to sign the verification report immediately after verification was done. It would not have been possible for PW1 to prepare the report from the counter itself. Then there was confusion between the officials as to what is to be done also in the wake of refusal of the petitioner to hand over the excess amount to be deposited in Sundry Deposit Account. PW7 has stated that when the petitioner refused to deposit the excess cash, he had reported to the higher authorities and he was asked to prepare intra-day cash verification report and record the refusal of the employee. Ext.M8 and Ext.M9 are the verification reports. The only difference between the two is that Ext.M9 contains a note to the effect that physical cash balance of Rs. 30,000 was there but the petitioner has refused to hand it over to be put in Sundry Deposit Account. PW7 has stated that the reports were typed on the same day.

18. There is the evidence given by other witnesses also in this respect. PW3 has stated that he is the one who typed the report. According to PW1, he has given necessary instruction to prepare the report. He has further stated that the report was given to the petitioner on the same day at the Manager's cabin. There is also the evidence given by PW5 that she has signed the report on 28.07.2003 in the evening by 0500 PM. PW1 has signed the report only on 29.07.2003 by 1100 AM. PW2 has also signed the report on 29.07.2003 between 1030 and 1100 AM. So it is very much clear that the report was very much available in the evening of 28.07.2003. If the evidence regarding preparation of the report and signing of the same are taken into account alongwith the version of the petitioner, it is very much clear that he was asked to sign the report on the same day but he has refused to do so.

19. Even assuming that the report was prepared on the next day it should not have prevented the petitioner from signing the same if the report depicted the correct picture of what had occurred at the time of intra-day cash verification. There was no necessity for the petitioner to refuse to sign the reports under the pretext that they were given on a later day.

20. One reason given by the Enquiry Officer for not accepting the case of the Management is that PW1 has signed in CSE Receipt and Delivery Book after balancing the cash. According to the Enquiry Officer, after signing these he cannot say that there was excess cash. PW1 has given explanation regarding this. He has stated that he thought that he will make a record of excess cash when the petitioner gave Sundry Deposit Voucher. This is quite natural because he was still expecting that the petitioner will be depositing the amount. He has informed the Branch Manager about the refusal of the petitioner to hand over excess cash and it was after this the Branch Manager has asked the petitioner to make the deposit. Since the petitioner defied the instruction of the Branch Manager also the higher authorities were consulted and it was after this the report of excess cash was prepared and the refusal of the petitioner to hand over the cash was recorded. Thus it could be seen that it was unreasonable that the petitioner has refused to put his signature in the verification reports. I find that the Disciplinary Authority has every justification in finding Charge Nos. 1 and 2 against the petitioner.

21. It is on account of the incident resulting in the third charge that intra-day cash verification was done. The third charge is that while the petitioner was counting the notes payable to customer Tarzan he had surreptitiously replaced Rs. 500/- notes with Rs. 100/- resulting in cash shortage of Rs. 20,000.

22. It is not in dispute that customer by name Tarzan had withdrawn Rs. 2,00,000/- in the morning of 28.07.2003 at the counter of PW4. The customer had left the counter with the money immediately after it was paid to him. He came back to the bank after more than an hour. It has been pointed out by the counsel for the petitioner that when the customer has left the premises with the money and later makes a complaint of cash shortage the bank is not bound to accept responsibility. It is clear from the evidence of PW1 itself that even when the customer came back to the manager, making a complaint of shortage of cash this fact was pointed out to him by the Manager as well as PW1 and there was heated argument between them and the customer. Normally the bank could not be made responsible for the shortage once the customer leaves the premises. He is expected to count the notes and ascertain the correctness of the notes handed over to him before he leaves the counter. Though the customer is said to have approached the Branch Manager, no written complaint seems to have been obtained from him. The concerned person is not examined also.

23. Admittedly, cash was handed over by PW4 to the customer. The petitioner either at the request of the customer or otherwise had taken it upon him to count the notes. He had used the counting machine at the centre table where PW5 was there for this purpose. At the time

when the notes were counted, apart from PW5, PW4 and DW2 were also present. Within 5 minutes the counting was done. It is a debatable question whether it would have been possible for the petitioner to replace Rs. 500 notes with Rs. 100 notes within such a short period. From the evidence of PW1 it is seen that PW7 has shown the amounts that were brought by the customer alleging that notes were mixed up and he had noticed that Rs. 500/- and Rs. 100/- notes were placed alternatively in the section. Even though the counting was done in the presence of so many staff nobody has noticed petitioner replacing notes of one denomination with another. The customer himself who was expected to watch the counting was close-by and he too did not notice anything. In such circumstance, the case that the petitioner had replaced the notes of higher denomination with notes of lesser denomination certainly could not be accepted.

24. Charge no. 3 was rightly found not proved by the Enquiry Officer. The Disciplinary Authority has found that the charge is partly proved. According to him there is evidence to show that the petitioner counted the cash at the centre table and then delivered the amounts directly to the customer. This itself could not be treated as a misconduct. On what basis the Disciplinary Authority has stated that the charge is partly proved is not clear. There is no acceptable evidence for this charge and the finding of the Enquiry Officer in this respect is to be accepted.

25. The fourth charge against the petitioner is that on 02.08.2003, when PW4 was by the centre table in the cash department, the petitioner made certain intimidating remarks referring to her. The translation of the remarks which is in Tamil quoted under Charge no. 4 is not provided. The evidence regarding this charge is that of PW5. She has deposed that on 02.08.2003 by 1000 AM, while herself, PW4 and others were inside safe room to take cash the petitioner entered the cash department and started making remarks addressing PW4. He is said to have asked her "What sister you are talking to Shanmugham, isn't cash balanced? What if you make a phone call, etc.?" PW5 has stated that they have put the incident in writing and given it to the Manager through the Union Secretary. However, PW4 who is the alleged victim of the incident has claimed ignorance of the incident. She has stated that the petitioner had not spoken to her in a harsh manner. Even assuming that the petitioner has spoken addressing PW4 in the manner deposed by PW5 it is difficult to treat those words as intimidating from the literal meaning of the words itself. Apart from this is the fact that PW4 who is supposed to be the victim had has no case of such an incident at all. If the incident had taken place PW4 is the one to say that she was intimidated. So the charge under this head could not be taken as established.

26. The fifth charge is that on 02.08.2003 itself at 0100 PM the petitioner behaved in a riotous manner to PW3. As seen from the charge by 0100 PM when PW3 was coming out of the toilet the petitioner prevented him and threatened him with dire consequences since he stood as a witness for the incident of excess cash of Rs. 30,000/-. The petitioner is said to have abused PW3, pushed him and caused hurt to him. He is also said to have used unparliamentary language on PW3 also.

27. The evidence available regarding the charge is that of PW3 itself. Though PW3 is said to have given a complaint to the Branch Manager, the same is not available. The petitioner also has complained regarding the incident and the same is marked as Ext.W1. In this the petitioner has raised a counter allegation that when he went to the toilet PW3 had come out of the toilet, caught hold of his shirt and had abused him in filthy language. He had immediately gone to the Branch Manager and complained him.

28. The version given by PW3 regarding the incident is that the petitioner met him at the toilet premises, he asked him why he has acted as a witness and threatened him holding both his hands and insisted that he should reply and then only he could leave. While PW3 he was struggling to come out the petitioner was pulling his hand and was restraining him from coming out.

29. From the evidence of PW3 alone, one could not make out what exactly had happened. It is clear that there was some skirmish between the petitioner and PW3 at the time. As seen from the evidence of PW7, both of them had immediately run to the Manager's cabin and had been complaining against each other to the Manager, Though, one Raghuraman, another Officer is said to have witnessed part of the incident he is not examined. The statement said to have given by him regarding the incident could not be relied upon in the absence of the evidence. The evidence given by PW3 is not sufficient to establish the charge.

30. Charge Nos. 6 to 8 are related to issue of cheques by the petitioner without sufficient balance in the account, return of cheques for want of sufficient funds and the assumption of the Bank based on the cheques that the petitioner has resorted to outside borrowings without approval of the appropriate authority. It is clear from the cheques produced and even from the admission made by the petitioner that the cheques were issued without sufficient funds and they were returned also. According to the counsel for the petitioner this would not amount to misconduct at all. The memorandum of settlement dated 27.05.2002 shows that incurring debts to an extent considered by the Management as excessive is a minor misconduct under Clause-71 of the settlement.

31. Having found that the finding of the Disciplinary Authority regarding charges 1 and 2 are justified, the question that remains to be considered is on the proportionality of the punishment given to the petitioner. The Disciplinary Authority has imposed the punishment of removal from service on the basis of his findings. It is to be borne in mind that the Disciplinary Authority himself did not enter a finding that there was misappropriation of money as narrated in Charge No. 3. When this aspect and other circumstances are considered, I feel that a lesser punishment would be sufficient in the matter. Accordingly, the punishment of removal from service is set aside and is modified to compulsory retirement from service with effect from 08.02.2008.

32. In view of my discussion above, an award is passed as follows:

The punishment imposed on the petitioner is modified and the punishment of Compulsory Retirement from service w.e.f. 08.02.2008 is imposed on the petitioner.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 2nd September, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ : WW1, Sri V. Anbalagan
Petitioner

For the 2nd Party/ : MW1, Sri K. Gomathi Nayagam
Managements

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	02.08.2003	Complaint letter of the petitioner
Ex.W2	02.08.2003	Attendance Register
Ex.W3	11.08.2003	Letter of the Petitioner
Ex.W4	15.02.2007	Letter by the petitioner to the Assistant General Manager
Ex.W5	07.01.2008	Letter by the petitioner to the Assistant General Manager
Ex.W6	25.02.2008	Letter by the petitioner to the Deputy General Manager

On the Management's side

Ex. No.	Date	Description
Ex.M1	10.04.2004	Charge sheet issued to Anbazhagan
Ex.M2	05.09.2005	Enquiry Report

Ex.M3	30.01.2006	Dissent Note of DA
Ex.M4	20.11.2006	Order of High Court in WP No. 7615 of 2006
Ex.M5	08.02.2008	Order of the Disciplinary Authority
Ex.M6	17.11.2008	Order of the Appellate Authority
Ex.M7	Various dates	Minutes of Enquiry Proceedings
Ex.M8	28.07.2003	Report of Intraday Cash Verification
Ex.M9	28.07.2003	Report of Intraday Cash Verification with a note signed by Kannusamy & A. K. Edwin - Officers
Ex.M10	15.04.2004	Garnishee Order on SBI from Principal Sub-Judge, Villupuram to attach the salary of V. Anbalagan for Rs. 79,555 in monthly instalments of Rs. 5,000 (Decree Holder – Sadaian)
Ex.M11	13.10.2000	Garnishee Order on SBI from District Munsiff, Villupuram for Rs. 27,623/- in monthly instalments of Rs. 3,000/- p.m. (Decree Holder – Akhtar Mohammad)
Ex.M12	31.03.2003	From bank to petitioner reg. returned cheques and calling for explanation
Ex.M13	30.09.2002	Cheque Nos. 179751 – Rs. 20,000
Ex.M14	12.05.2003	Cheque No. 179756 – Rs. 25,000
Ex.M15	30.07.2002	Cheque No. 179741 – Rs. 3,000
Ex.M16	03.08.2002	Cheque No. 179747 – Rs. 1,450
Ex.M17	20.02.2003	Cheque No. 179753 – Rs. 2,000
Ex.M18	02.08.2003	Statement of R. Raghuraman – Dy. Manager
Ex.M19	-	Cheques referred and returned register
Ex.M20	-	Cash Received Delivery Book
Ex.M21	25.02.2003	Legal Notice of Mr. V. Jagadeesan, Panruti on behalf of Co-Optex–Panruti to the petitioner and two others demanding Rs. 11,384

Ex.M22	-	Prosecution Brief
Ex.M23	21.05.2005	Defence Brief
Ex.M24	31.12.2007	Letter of Management to the petitioner enclosing letter of 19.12.2007
Ex.M25	12.02.2000 30.06.2004	Statement of account of petitioner
Ex.M26	20.03.2003	H.4 – Notice issued by Central Nazir of Principal Subordinate Court, Villupuram to State Bank of India, Gingee in Ref: O.S.No. 189 of 2001.
Ex.M27	19.05.2004	Letter from Disciplinary Authority to the petitioner granting further time to submit his explanation
Ex.M28	31.05.2004	Explanation of the petitioner to the Charge Sheet dated 10.04.2004
Ex.M29	01.08.1994	DIS-CON dated 01.08.1994 Appellate Authority's order "confirming punishment of withdrawal of Special Allowance for a period of four years with signature of Anbalagan dated 04.08.1994
Ex.M30	24.05.1997	DIS-CON-25 – dated 24.05.1997 "warning" Disciplinary Authority order
Ex.M31	06.09.1999	DIS-CON-230 dated 06.09.1999 Charge Sheet
Ex.M32	03.01.2002	DIS-CON-354 dated 03.01.2002 "bringing down to lower stage in your scale of pay for a period of one year with the acknowledgement of Anbalagan dated 09.01.2002

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2508.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिलासपुर रायपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध में उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 104/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 09-09-2014 को प्राप्त हुआ था।

[सं. एल-12012/31/96-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 104/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bilaspur Raipur Kshetriya Gramin Bank and their workmen, received by the Central Government on 09/09/2014.

[No. L-12012/31/96-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/97

PRESIDING OFFICER : SHRIR.B.PATLE

Shri Mohanlal Sahu,
Ex-Messenger-cum-Sweeper,
Gram & Post Kargikala,
Distt Bilaspur.

.....Workman

Versus

The Chairman,
Bilaspur Raipur Kshetriya Gramin
Bank Head Office,
Dayalband,
Distt. Bilaspur (MP)

.....Management

AWARD

Passed on this 20th day of August, 2014

1. As per letter dated 25-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/31/96-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank, Branch Kargikala in terminating the service of Shri Mohan Lal Sahu, Ex-Messenger-cum-Sweeper w.e.f. 23-7-94 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at 4/1 to 4/3. Case of workman is that he was engaged as messenger by IInd party in Bilaspur branch from 27-4-88. He was continuously working till 23-7-94. His services were discontinued without notice. That workman was doing work of sweeping, cleaning, distribution of letters, taking stationery to required tables, spreading water for

khasta etc. he was working from 10 AM till late evening. He was also required to work like writing pass books, registers, taking entries in registers. He was deputed for taking stationery. He was continuously working as per directions given by the Manager doing all these works. His termination of his service is illegal. He was not paid retrenchment compensation at the time of termination of his service. Workman prays for his reinstatement with consequential benefits.

3. Management filed Written Statement at page 7/1 to 7/10. IInd party denies that workman was continuously working. As per management, Ist party workman was employed purely as part time daily wage employee. Working days are shown in Para-1. Workman has not completed 240 days during any of the year. It is submitted that the workman was not appointed by the Bank. He is not entitled to notice before termination of his service. Workman was engaged on daily wages. He was not continuously working. Notice under Section 25-F of I.D. Act was not required. That subordinate staff of the Bank is appointed by the Selection Committee following recruitment procedure. It is reiterated that workman had not completed 240 days continuous service. The working days of workman are shown. Workman is not entitled to notice or retrenchment compensation as he was not covered under Section 25-B of I.D. Act. On such contentions, IInd party prays for rejection of claim.

4. Workman filed rejoinder at page 9/1 to 9/2 reiterating his contentions in statement of claim. Workman submits that after termination of his service, Shri Ganga Prasad Sahu, Prahlad Soni, Narmada Pd. Sahu, Krishna Kumar Sahu, Smt. Rajeshwari Sahu, Ramesh Sahu and others were engaged by IInd party. He is not given opportunity. Therefore termination of his service is illegal.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank, Branch Kargikala in terminating the service of Shri Mohan Lal Sahu, Ex-Messenger-cum-Sweeper w.e.f. 23-7-94 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F of I.D. Act. workman filed affidavit of his evidence. Workman has stated that he was continuously working in Kargikala branch of the

bank from 27-4-88 to 23-7-94. He was orally terminated without notice, retrenchment compensation was not paid to him. He was doing various kinds of work in the Bank. Management failed to cross-examine the workman. Management also failed to participate in the reference proceeding. No evidence is adduced by IInd party to substantiate his contentions about working days of workman pleaded in Written Statement. In absence of such evidence and unchallenged evidence of workman, I find no reason to disbelieve evidence of workman. Workman had submitted application for production of documents on 14-9-99 though copy was received and reply filed by management contending that relevant documents have already filed. IInd party has not produced any document about working days of workman therefore contentions of management cannot be accepted. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2- in view of my finding in point No.1 that termination of services of workman is illegal and violation of Section 25-F of I.D. Act, question arises whether workman is entitled for reinstatement with back wages. Evidence of workman shows that he was engaged without following recruitment process therefore claim for reinstatement with back wages cannot be allowed. Considering workman working from 27-4-88 to 23-7-94 for more than 6 years, reasonable compensation Rs. One Lakh would be reasonable. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of Bilaspur Raipur Kshetriya Gramin Bank, Branch Kargikala in terminating the service of Shri Mohan Lal Sahu, Ex-Messenger-cum-Sweeper w.e.f. 23-7-94 is not proper and legal.
- (2) IInd party is directed to pay compensation Rs. 1 Lakh to the workman within 30 days from the date of publication of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 22/06) को प्रकाशित करती है जो केन्द्रीय सरकार को 8-09-2014 को प्राप्त हुआ था।

[सं. एल-41012/4/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 22/06) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 08/09/2014.

[No. L-41012/4/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/22/06

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Shailendra Kumar,
S/o Late Shri Bhoora Sharma,
C/o Shri J.P.Sharma, Bhatta Mohalla,
Near D.Mahajan House,
Mundawara, Katni,
Distt. Katni (MP)

.....Workman

Versus

Divisional Railway Manager,
West Central Railway,
Jabalpur

.....Management

AWARD

Passed on this 21st day of August, 2014

1. As per letter dated June 2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/4/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of DRM, West Central Railway, Jabalpur (MP) in terminating the services of Shri Shailendra Kumar S/o Late Shri Bhoora Sharma, Ex-U.K.C Ticket No. 1911 w.e.f. 5-6-86 is justified? If not, what relief the applicant is entitled to”

2. After receiving reference, notices were issued to the parties. Unfortunately Ist party workman died on 3-6-07 before submitting his statement of claim in the matter. The application for LR's of deceased workman was filed by Shri Rishab Sharma claiming himself to be adopted son of deceased. The application for substituting LR has been rejected considering name of Rishab Sharma

for succession was rejected by Civil Court, Katni in Case No. 13/2011. Notices served were issued to brother of the deceased. He has not appeared in the matter. Thus the claim of Ist party workman is proceeded exparte against LR's.

3. IInd party filed affidavit of Shri Arun Kumar Mishra contending that the application for LR filed by Rishab Sharma through J.K.Sharma was rejected. The contention of Rishab Sharma claiming to be adopted son of workman are not accepted. Management was directed to file exparte Written Statement. The services of workman were terminated on 5-6-86. The dispute is raised after 20 years. The records beyond 10 years are not maintained as per circular No. 235 of April 1989. The documents pertaining to the dispute are not available. It is submitted that management is justified in terminating services of the deceased workman.

4. Workman died during pendency. His LR's are not brought on record. No statement of claim is filed on behalf of LR's. Therefore legality of termination of services of workman could not be decided on merit. The matter deserved to be disposed off by way of No Dispute Award. Accordingly award is passed as under:-

“As Statement of Claim is not filed by deceased or his LR's, No Dispute Award is passed.”

5. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 718/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-09-2014 को प्राप्त हुआ था।

[सं. एल-12012/41/96-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 718/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2 Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 01/09/2014.

[No. L-12012/41/96-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Present : SRI KEWAL KRISHAN, Presiding Officer****Case No. I.D. No. 718/2005**

Registered on 1.9.2005

Secretary,
State Bank of Patiala Staff Union,
House No. 2112, Nehru Colony,
Khanna Nagar, Amritsar.Petitioner

Versus

Regional Manager,
State Bank of Patiala,
Ambedkar Chowk, Jalandhar.Respondents

APPEARANCES

For the workman : Sh. Raj Kaushik Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

Passed on 28-7-2014

Central Government vide Notification No. L-12012/41/96-IR(B-I) Dated 23.6.1997, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of State Bank of Patiala, Amritsar in issuing order vide order dated 24.8.1995 for deemed voluntary retirement of Sh. Pradeep Bhalla, Cashier-cum-Clerk posted at Mukherjee Marg branch of State Bank of Patiala, Amritsar w.e.f. 9.9.1994 is legal and just? If not, to what relief the workman is entitled to and from which date?”

In response to the notice, the workman submitted statement of claim to which the management filed written reply.

The facts emerging from the documents are that the workman was posted as Clerk-cum-Cashier at Katra Branch, Amritsar with the respondent management and he was transferred on 28.2.1994 to Mukherjee Branch, Amritsar. He was on leave from 28.2.1994 to 3.3.1994 and he only reported for duty on 13/8-9/1994 and according to him, he suffered injuries on 3.3.1994 and due to illness he could not join the duty. He joined the duty on 13/8-9/1994. While posted in the branch, he misbehaved with the customer on 5.9.1994 and 8.9.1994 and was charge-sheeted on 5.4.1995. He did not attend his duty w.e.f. 9.9.1994 and remained absent without any

leave. He was served with a notice dated 10.1.1995 asking him to join the duty. Again a letter dated 20.1.1995 (Exhibit R3) was sent to him asking him to report for duty within 30 days failing which it would be deemed that he had voluntarily retired from service.

According to the workman he sent reply (Exhibit PH) to the bank and the management has denied the receipt of the said letter. However he did not join the duty in pursuance of the letter dated 20.1.1995 and consequently, it was ordered that he had voluntarily retired from service vide letter dated 24.8.1995 (Exhibit R4) by the Regional Manager of the respondent-Bank.

The management has denied that the previous absence from 3.3.1994 to 13.8.1994 was due to sickness.

It is also pleaded by the workman that he was transferred from the Branch under the influence of one Union and his services were terminated without conducting any inquiry. He has sought reinstatement in service with back wages.

Parties were given opportunity to lead evidence.

Workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management has examined Sh. Narinder Singh, Deputy Manager, who filed his affidavit (Exhibit R1) supporting the case of the respondent bank.

I have heard Sh. Raj Kaushik, counsel for the workman and Sh. N.K. Zakhmi, counsel for the management.

It was contended by the learned counsel for the workman that in this case the workman did not attend his duty from 3.3.1994 to 12/8-9/1994 as he met with an accident and he submitted a certificate from a Chief Medical Officer and his absence was not intentional. He has further argued that the management managed false complaints and on the basis of that, he was wrongly charge-sheeted and the management without conducting any inquiry terminated his services which are illegal. He has further submitted that though charge-sheet was served on the workman, but in pursuance thereof, no inquiry was conducted and as such the order terminating the services is illegal.

I have considered the contentions raised by the learned counsel.

It may be added that no action was taken against the workman on the basis of the charge-sheet and rather he was deemed to have voluntarily retired from service as he remained absent w.e.f. 9.9.1994 vide order dated 24.8.1995 (Exhibit R4).

Clause 17-A of the Bipartite Settlement dated 10.4.1989 read as follow:-

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:-

- (a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/ subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available, Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

Thus this Clause provides that if an employee absents himself from work for a period of 90 days, or there is evidence that he has taken up employment in India; or the management is satisfied that he has no intention of joining the duty, the management after giving a notice calling upon him to report for duty within 30 days of the notice, the management can deem the employee to have voluntarily retired from bank's service.

The management has specifically pleaded in para 8 of the written statement on merit that he remained absent from duty without any leave application w.e.f. 9.9.1994. The workman did not controvert this assertion in his rejoinder and therefore it is to be taken that he remained absent w.e.f. 9.9.1994 till the day i.e. 20.1.1995 when a notice was issued to him calling upon him to report for duty within 30 days failing which he was presumed to have voluntarily retire from service. The workman has pleaded in para 9 of his statement of claim that he was asked to

resume duties vide order dated 20.1.1995 and he replied that he was not in a position to resume the duties due to harassment and victimization by respondent No.3. This admission on the part of the workman clinches the issue that he remained absent from 9.9.1994 till the date of issuance of the notice dated 20.1.1995 (Exhibit R3) and since he failed to resume the duties, the bank was well within its rights, in view of Clause 17A of the Bipartite Settlement to deem that workman has voluntarily retired from the service.

The photocopy of the letter Exhibit PH has been placed on file by the workman and it shows that he refused to join the duty by alleging that it was unsafe for him to resume the duty. Thus in the statement of claim as well as in the said reply, he did not comply with the notice dated 20.1.1995 and as such the bank has rightly passed the order dated 24.8.1995. In the given circumstances and in view of provisions of law, there was no need for the management to conduct an inquiry as argued by the learned counsel.

In result, it is held that the order dated 24.8.1995 passed by the respondent management is legal and valid and the workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 34/92) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-09-2014 को प्राप्त हुआ था।

[सं. एल-12012/124/88डी-III(ए)/आईआर (बी-III)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/92) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 01/09/2014.

[No. L-12012/124/88D-III(A)/IR (B-III)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/34/92****PRESIDING OFFICER : SHRIR.B. PATLE**

Shri Samuel A. Henry,
S/o Late A.F. Henry,
C/o State Bank Employees Union
Through P.C. Khare, 507,
Beoharbagh, JabalpurWorkman

Versus

Chief Regional Manager,
State Bank of India,
Regional Office,
Marhatal, JabalpurManagement

AWARD

Passed on this 11th day of August, 2014

1. As per letter dated 2-1-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/124/88/D-III(A)/IRB-III. The dispute under reference relates to:

“Whether the action of the management of State Bank of India in not allowing Shri Samuel A. Henry to work in the post of Teller and thereby denying him special allowance was justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/5. Case of workman is that IInd party Bank is constituted under State Bank of India Act, 1955. Management not acted fairly giving benefit of special allowance to workman laid to the dispute. The Bank employees are subordinate staff and non-subordinate staff. Non-subordinate staff includes clerks, cashiers, stenos, officials in charge, telephone operators, audit clerks, draftsman, machine operators, tellers, special assistants, headclerks, etc. Ist party workman claims that he belongs to category of workman from non-subordinate staff of the Bank. That as per Para 5.282 of Desai Award, special allowance to certain category of workman is provided for non-subordinate or clerical cadre. Workman being senior most eligible employee at material time at Jabalpur was given higher appointment on the special allowance bearing post of Teller w.e.f. 22-8-85. He was continuously working as Teller but he was not paid full special allowance on regular basis. He requested management to comply with conditions of appointment of Tellers. That he stood confirmed as Teller

on completion of 6 months continuous working. His request and recommendations were not considered.

3. In December 1986, Telex machine was installed at Jabalpur branch of the Bank. Workman was working as Teller. He was senior most clerk typist in the branch on date of installation of Telex machine. He was eligible for appointment on special allowance bearing post. Telex machine operator were in clerical cadre. That management appointed Ravindra Kumar clerk typist on special allowance bearing post of Telex operator ignoring seniority of Shri S.K. Jat. Objection in appointment of Ravindra Kumar Makhija was objected by Shri S.K. Jat claiming seniority and eligibility for special allowance bearing post. Management made prestige issue and did not offer appointment to Shri S.K. Jat. Workman further submits that in November 1986, he approached Union for redressal of his grievance. Notice was served on management on 4-3-87 for payment of his dues. That with ulterior motive to deny claim of Shri S.K. Jat management issued memorandum dated 11-5-87 to the workman. That being senior most clerk typist, it was decided to give him chance as Telex Operator. Management Bank wanted workman to accept work of Telex Operator to avoid claim of Shri Jat. Workman further submits that as he did not oblige management caused harassment and humiliation and financial loss to him in various ways like issuing memos, deducting wages and asking him to work as an ordinary clerk etc. Workman raised dispute before ALC. However Government refused to make reference. He filed Writ Petition No. 3690/88 in High Court of M.P. On direction of Honble High Court, the reference was made. Workman submits that he being senior most clerk typist, was not given special allowance bearing post of regular Teller. Consequently he was denied special allowance. On such ground, workman is praying for appropriate relief.

4. IInd party filed Written Statement at Page 7/1 to 7/5 denying claim of workman. IInd party submits that Ist party workman is permanent employee appointed as clerk-cum-typist. The Bank was compelled of making temporary appointment of Teller for purpose of accepting electric bills at the branch. The post of Teller is carrying allowance of Rs. 325 per month. 4 posts of Teller were sanctioned for Civil Line Branch. 4 persons were already appointed in said branch in 1985. Workman was working as clerk typist. Because of additional workload, workman was asked to work on post of teller on officiating basis as per branch seniority temporarily. That post of teller is in cadre for which zonal wise seniority is maintained. Workman was paid allowance for the period he worked as Teller. He has no right to the post of Teller by temporary working on said post. IInd party further submits that workman was asked to work on post of Teller on officiating basis from 22-8-85 to 24-11-87 on account of expansion of powers of cashier, the temporary teller counter was abolished from 25-11-87

and the work was given to the cashier. The opening of the temporary counter of Teller was neither sanctioned nor was there any additional teller post sanctioned. Workman was paid allowance for the period he worked. Appointment on post of Teller is regulated by the administrative instructions and memorandum dated 15-7-81. Earlier post of Teller was filled from clerks working in the branch on the basis of seniority. However since the clerks working on the post of Teller were deemed to have confirmed after working more than six months. That the instructions were modified by Circular No.2 dated 15-1-1982. Selection for the post of Teller was made on the basis of combined zonal seniority of clerks and departmental staff. That seniority of Teller on department was also to be determined on zonal seniority basis. If they were found eligible for appointment on zonal seniority basis, they were to be continued as Teller. Workman was asked to work as Teller on officiating basis in 1985 as per Circular No.2 of 1985. The appointment on the post of Teller could be made only on zonal seniority basis. Workman could not be appointed on post of Teller. Reiterating those contentions, IInd party submits that workman is not entitled to any relief. Workman was paid for his working on officiating basis as Teller as per instructions already laid down. Workman is not entitled to officiating allowance for post of Teller on the basis of Zonal seniority basis. On such ground, IInd party prays for rejection of claim.

5. Workman has filed rejoinder at page 8/1 to 8/6 reiterating his contentions in statement of claim. It is further submitted that management of Bank itself did not strictly adhere to the provisions of circulars. Management made efforts to take shelter of budgetary which remains on paper only. It is denied that post of Teller was temporarily created to pop up with additional work load. Workman was continuously absorbed for 2 ½ years. The post was not withdrawn. When workload was already negligible, workman was allowed to continue to work. He was not advised or given impression that his posting as Teller was of temporary nature. After working for six months, work of Teller could not be withdrawn. He argued to be confirmed. He was working without break. On such ground, Ist party workman prays for special allowance for the post of Teller.

6. Management filed reply to the rejoinder filed by workman at page 9/1 to 9/6 reiterating his contentions in Written Statement.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of State Bank of India in not

allowing Shri Samuel A. Henry to work in the post of Teller and thereby denying him special allowance was justified?

- (ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

8. Workman being aggrieved by denial of special allowance for post of Teller has raised present dispute. Workman submits that he was continuously working on post of Teller for 2 ½ years. He was never informed that post was of temporary nature. He was denied special allowance for said post is illegal. IInd party in his Written Statement and reply to rejoinder denied all material contentions of workman. Management has reiterated that the workman was appointed temporarily on post of Teller Special Allowance carrying post as per circular No. 2/82. The selection for the post of Teller is required to be made on zonal seniority basis therefore workman is not entitled to relief claimed by him. He has no right to the post of Teller as he was temporarily appointed on officiating basis considering increase in work.

9. Documents are produced Exhibit M-1 to M-12 by management. Exhibit M-1 is copy of application under Section 33 filed by workman. M-2 is copy of reply filed by IInd party before ALC. It is contented by IInd party because of additional work load, workman was asked to work on officiating basis on post of Teller. That workman was never appointed on post of Teller as he was not senior most in Regional Seniority List. The post of Teller was not sanctioned. In document Exhibit M-3, Government refused to make reference. Exhibit M-4 is copy of circular No. 47/81 instruction for appointment of Tellers. Para-3 of the said document is clear that on continuous working on he post of Teller, it would be deemed to have been confirmed on said post. Exhibit M-5 is copy of circular No. 2/82. Para-3 of said circular provides that appointment for the post of Teller is made on basis of zonal seniority. Exhibit M-6 is office order discontinuing workman from post of Teller from 25-11-87. Exhibit M-7 is copy of seniority list dated 1-2-87. Name of workman is appearing at Sl.No. 22 his date of appointment is shown 12-6-75. Exhibit M-7 is copy of complaint submitted by workman to ALC. Exhibit M-9 is copy of letter given by workman dated 14-5-87. Exhibit M-10 is copy of Writ Petition No. 210/96. The circulars No. 47/81, 2/82 are not in dispute between parties. Workman has produced documents Exhibit W-1 is Bank's policy on record of retention. The relevant record is destroyed.

10. Workman filed affidavit of his evidence stating that as per Circular No. 47/81, he is deemed to be confirmed on post of Teller. That he was employee of State Bank of India, Tularam chowk branch. As per letter dated 12-8-83, that since he was performing duties of Teller for past

3 years, he worked continuously for 2 ½ years at State Bank of India, Main Branch, Jabalpur. That destruction of record on 31-3-00 was attempt to suppress his facts to deny the facts claimed by him. From further evidence of workman, the documents are exhibited. Management's representative declined to cross-examine workman. Thus evidence of Ist party workman remained unchallenged. Exhibit W-1 to W-14 produced by workman proved from his further evidence. Claim of workman after continuous working for six months on post of Teller, he is deemed confirmed as per circular No.47/81(W-1). Management has contented that workman was appointed on officiating basis. He was not eligible for appointment on post of Teller on zonal seniority basis. In the evidence of management's witness Ram Sharan Prajapati, he supported contentions of IInd party that workman was asked to officiate temporarily to cop up with the work. The opening of temporary counter of Teller was not sanctioned. There was no additional sanctioned teller post workman was not eligible for post of Teller on zonal seniority basis. Workman was never appointed on post of Teller. Though the management's witness says that workman was appointed on officiating basis on post of Teller, the order is not produced. IInd party has not produced any evidence whether other 4 persons working in the branch were eligible for appointment on post of Teller on zonal seniority basis. There is absolutely no evidence that only 4 posts of Teller were sanctioned in the branch. The evidence of workman remained unchallenged. There is no evidence about circular No.2/82 was strictly acted upon by the Bank. When Circular No. 2/82 was issued in the year 1982, the evidence of IInd party is absolutely silent how workman was temporarily appointed on post of Teller and allowed to work for more than 2 ½ years. The evidence on record supports claim of workman that he was denied special allowance carrying post after working for more than 2 ½ years cannot be justified. For above reasons, I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India in not allowing Shri Samuel A. Henry to work in the post of Teller and thereby denying him special allowance is not legal and justified.
- (2) IInd party is directed to pay special allowance for the post of Teller to workman from 25-11-87 till he hold post of Teller or equivalent special allowance carrying post.

Amount of Special Allowance as per above directions be paid to workman within 30 days from the date of publication of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 26/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-08-2014 को प्राप्त हुआ था।

[सं. एल-41012/128/2004-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 12/08/2014.

[No. L-41012/128/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 26/2008

Ref. No. L-41012/128/2004- IR(B-I) dated 20.03.2008

BETWEEN

The Divisional Organization Secretary,
Uttar Railway Karmchari Union,
283/63, Kha, Garhi Kannora (Premvati Nagar),
PO - Manak Nagar, Lucknow-226 001
(Espousing cause of Shri Vijay Bahadur)

AND

The Senior Divisional Personnel Officer,
Northern Railway,
D.R.M. Office, Hazraganj,
Lucknow

AWARD

1. By order No. L-41012/128/2004-IR(B-I) dated 20.03.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Organization Secretary, Uttar Railway

Karmchari Union, 283/63, Kha, Garhi Kannora (Premvati Nagar), PO - Manak Nagar, Lucknow and the Senior Divisional Personnel Officer, Northern Railway, D.R.M. Office, Hazraganj, Lucknow for adjudication to this Central Government Industrial Tribunal –cum- Labour Court, Lucknow.

2. The reference under adjudication is:

“Kya Prabandhan Uttar Railway, Lucknow द्वारा Shri Vijay Bahadur Verma putra Shri Ram Adhar Verma, Diesel Sahayak ko varsh 1983-84 ke panel main samayojit na karke varsh 1991-92 ke panel main samayojit karna uchit tatha nayasangat hai? Yadi nahi, to karmkaar kis anutosh ko pane ka adhikaari hai?”

3. The case of the workman's union is that the workman, Shri Vijay Bahadur Verma was appointed on the post of Cleaner on 20.12.76 and worked continuously till 03.09.81 when he has been retrenched illegally on 04.09.81. The said retrenchment was set aside by the CGIT-cum-Labour Court, Kanpur vide award dated 25.11.85 in I.D. No. 163/1983; and the workman, whose name finds reference at serial no. 42 of the award, was ordered to be reinstated with full back wages. It is further submitted that the workman was reinstated on 04.08.83 during pendency of the I. D. No. 163/1983. The workman's union has submitted that the appeal against said award was rejected by Hon'ble High Court, Lucknow Bench, Lucknow vide order dated 14.3.91 and its review too was rejected vide order dated 22.12.2004. Thereafter, the management preferred SLP before Hon'ble Apex, which was also rejected vide order dated 03.01.2006. It is alleged by the workman's union that the workman had been regularized on the post of Loco Cleaner vide order dated 30.08.91; whereas it included the other workmen junior to him in the panel for the year 83-84 on the basis of 120 days working only. It has been submitted that the workmen viz. Shri Amarjeet Singh and Abdul Aziz were included in the panel for year 1992; but on the directions of Hon'ble CAT, Lucknow vide order dated 26.04.93 and 25.04.2001 were included in the panel for the year 83-84; likewise, the workmen viz. Shri Pratap Bahadur and Ahmad Ali were included in the panel for the year 1992; but on the directions of this Tribunal in I.D. No. 28/2004 and 12/2005 respectively, they have been included in the panel for the year 83-84. Accordingly, the workman's union has prayed that the workman be included in the panel for the year 83-84 as other workmen, junior to him have been included.

4. The management of the railways has denied the claim of the workman's union by filing its written statement; stating therein that the workman was re-engaged in compliance of award dated 19.02.87 of the CGIT-cum-Labour Court, Kanpur and was absorbed and regularized as per availability of regular vacant post,

therefore, he cannot claim the seniority over and above those persons, who were given seniority by the order of the Hon'ble Central Administrative Tribunal as well as by the order of this Tribunal as the workman was not a party in the respective cases. It has relied on Ramakotaiah vs. Union of India 2007 (6) A.W.C. 6556 (S.C.); wherein Hon'ble Apex Court has held that the seniority of casual labour in the railway is treated as temporary, but subsequently absorbed in temporary/permanent cadre, to be reckoned from the date of their regular appointment. Accordingly, the management of the railways has prayed that the case be rejected as devoid of merit.

5. The workman's union has filed its rejoinder; wherein he has stated nothing new apart from reiterating the averments already made by his statement of claim.

6. The workman's union has filed documentary evidence in support of their claim; whereas the management has filed none. The workman filed its evidence and was cross-examined by the authorized representative of the management. On conclusion of the workman's evidence, the case was fixed for managements' evidence on 28.09.2010; but the management did not turn up for its evidence for several dates in a long span of time, which led to closing opportunity of evidence on behalf of the management vide order dated 28.06.2012 and 26.07.2009 was fixed for arguments. The management again did not turn for putting forward its arguments or get the order dated 28.06.2012; accordingly, heard authorized representative of the union only and reserved the file for award, keeping in view the reluctance of the management to contest their case and long pendency of the case since 2008.

7. After considering pleadings of the parties and submissions of the workman's representative, an award dated 12.06.2013 was passed by this Tribunal, which was notified vide dated 23.07.2013 by the Central Government.

8. The authorized representative moved an application to recall award dated 12.06.2013, which was registered as Misc. Case No. 10.2013. The workman did not turned up to file its objection to the recall application nor did it put up any oral arguments. Accordingly, the award dated 12.06.2013 was recalled and the present industrial dispute was revived on its original number, vide order dated 06.01.2014, fixing 14.02.2014 for hearing.

9. The parties' authorized representatives were absent on 14.02.2014; however, they were present on 16.04.2014 and 28.05.2014; but sought adjournment; accordingly, 07.07.2014 was fixed for arguments at the request of the parties. On 07.07.2014 authorised representatives of both the parties were present who forwarded oral arguments in support of their case.

10. I have given my thoughtful consideration to the arguments forwarded by the authorized representatives of the parties and perused entire evidence on record.

11. It is the case of the workman that initially he was illegally terminated and when he was reinstated on 04.08.1983, in the wake of award of the CGIT-cum-Labour Court, Kanpur in I.D. No. 163/1983, the management did not include him in the panel for the year 83-84 and instead he was included in the panel for the year 91-92. It is also the case of the workman's union that the management included other junior workmen in the panel of 83-84 on the basis of 120 days' working up to 30.09.81 and few similarly situated other workmen viz. Amarjeet Singh & Abdul Aziz in the compliance of orders of Hon'ble CAT and Shri Pratap Bahadur and Ahmad Ali in compliance of this Tribunal's order. He has substantiated its pleading with the help of his oral evidence.

12. In rebuttal, the management has come forward with pleadings that the re-engagement of the workman was in compliance of award dated 19.02.87 of the CGIT-cum-Labour Court, Kanpur and was absorbed and regularized as per availability of regular vacant post, therefore, he cannot claim the seniority over and above those persons, who were given seniority by the order of the Hon'ble Central Administrative Tribunal as well as by the order of this Tribunal as the workman was not a party in the respective cases. The management has failed to corroborate its pleadings through some cogent evidence.

13. The workman has sought empanelment in the year 83-84 on the basis of 120 days' working up to 30.09.81 as the other juniors were included. He has mentioned case of one such junior viz. Abdul Aziz who had been included in the panel for the year 83-84 in compliance of order of Hon'ble CAT. It is noteworthy to mention here that Abdul Aziz was terminated w.e.f. 4.10.1981 and was reinstated by Labour Court and the same was confirmed by order dated 05.02.1990 Hon'ble High Court confirmed the same. On reinstatement he was put for screening in the year 1991 whereas workmen junior to him had already been screened and empanelled in the year 1982. Therefore, the workman moved an original application before Hon'ble CAT, Lucknow for inclusion of his name in the panel for the year 1982. Hon'ble CAT vide their order dated 25.04.2001 directed the management as under:

“to include the name of the applicant in the panel frame on the basis of screening held in the year 1982 and place the name of the applicant at appropriate place as Cleaner over and above his juniors and to further accord him all the consequential benefits.”

The management challenged the above order of the CAT before Hon'ble High Court, Lucknow Bench vide writ petition No. 68 (SB) of 2002, which was disposed of vide their order dated 20.03.2006 as under:

“Once the termination order has been held to be void and has been set aside with the specific direct that the respondent shall be reinstated in service with full back wages, his continuity in service cannot be taken away nor he can be treated as new appointee or fresh appointee after passing of the order by the Labour Court, which was confirmed by the High Court. Reinstatement in the aforesaid circumstances would necessarily mean continues service from the date of appointment, in this case initial engagement, unless, of course, there were some directive to the contrary by the Court. The respondents had been taken into service only because of the order passed by the Labour Court, confirmed by the High Court, and therefore, he was entitled to have all the consequential benefits arising out of the orders passed by the Court. The termination order having been quashed, the respondent would also be entitled to seniority and consequential benefits fixation of wages and salary etc.”

The management moved review Petition No. 129/2006 of the above order dated 20.03.2006, which was dismissed being not maintainable vide order dated 15.5.2006. Thereafter, the management included the name of the workman, Abdul Aziz in the panel for the year 1982.

14. Admittedly, the workman was working with the management of Northern Railways since 20.12.76 and was terminated w.e.f. 04.09.81 and was reinstated back in the services in compliance of award dated 25.11.85 given by the CGIT-cum-Labour Court, Kanpur in I.D. No. 163/83; and also in view of the fact that appeal against said award vide writ Petition No. 5901/1986 and its review vide review Petition No. 34/1991 before Hon'ble High Court were dismissed vide orders dated 14.3.91 and dated 22.12.2004 respectively. The SLP No. 11945 (C) of 2005 before Hon'ble Apex Court too was dismissed vide order dated 03.01.2006. The workman was reinstated on 04.08.83 during pendency of industrial dispute before Labour Court and was included in the panel for the year 1991-1992.

Thus, the main issue for consideration before this tribunal is that as to whether the workman is entitled to be included in the seniority list of 1981 of which he was deprived consequent to his alleged illegal termination in the year 1981? and if it comes out in positive then its effect.

15. In the instant case the workman was not in the service of the opposite party in the year 1981 due to illegal termination of his services. The CGIT-cum-Labour Court, Kanpur setting aside his termination directed for reinstatement with full back wages. This means that when the Tribunal awarded for full back wages then it assumed that the workman was in continuous service for the period of termination. Once the order termination was held illegal and the same was held to be void and has been set aside by the Labour Court with the specific direction to the management of the railways that the workman shall be reinstated in service with full back wages then his continuity in service cannot be taken away nor he can be treated as a new appointee or fresh appointee after passing of the order by the Labour Court, which was confirmed by the Hon'ble High Court. Therefore, reinstatement in the aforesaid circumstances would necessarily mean continuous service from the date of appointment, in the instant case initial engagement, unless, of course, there were some directive to the contrary by the Court. The respondent had been taken into service only because of the order passed by the Labour Court, confirmed by the High Court, and therefore, he is entitled to have all the consequential benefits arising out of the orders passed by the Court. The termination order having been quashed, the workman shall also be entitled to seniority and consequential benefits. Moreover, the management has not turned up to substantiate its version before this court; and it is settled law that mere pleading are no proof.

16. Therefore, in view of the circumstances of the case and discussions made hereinabove, I come to the conclusion that the action of the management in not including the workman in the panel for the year 1983-1984 is not proper and justified. Accordingly, the workman is entitled to be included in the panel for the year 1983-84 over his juniors after complying the procedure, within two months from the notification of the award. Further, he shall also be entitled for consequential financial benefits accrued to his next junior.

17. Award as above.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 49/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-09-2014 को प्राप्त हुआ था।

[सं. एल-41011/136/2010-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 49/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 5/09/2014.

[No. L-41011/136/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 31st March, 2014

Reference (CGITA) No. 49/2011

Reference order no. L-41011/136/2010/IR(B-I)

Dated 19.05.2011

1. The Chief Project Manager,
Western Railway, 2nd Floor,
B.G. Station Building, Kalupur,
Ahmedabad (Gujarat)
2. The Dy. Chief Engineer (C) GP-1,
Western Railway, Near Platform Complex,
Post-Railway pura,
Ahmedabad (Gujarat)
3. The Chief Works Manager,
CLW Workshop, West Central Railway,
Kota (Rajasthan) 1st Parties

And

Their Workman
Through the Divisional Secretary,
Paschim Railway Karmachari Parishad,
28/3, Narayan Park,
Behind Chandkheda Railway Station,
Sabarmati, Ahmedabad (Gujarat) (2nd Party)

For the First Party : Shri Vilash G. Goswami,
Advocate

For the Second Party: Shri Raghuvir Singh Sisodia,
President, P.R.K.P. (Union)

AWARD

The Government of India/Ministry of Labour vide its order No. L-41011/136/2010-IR (B-I), New Delhi dated 19.05.2011 referred the dispute between the

employers in relation to the management of western Railway and their workman u/s 10 clause (d) sub section 1 and (2A) of the Act to this tribunal for adjudication in respect of the matters specified in the Schedule:

SCHEDULE

“Whether the action of the management of Deputy Chief Engineer (*construction) GP-1, Western Railway, Ahmedabad in not fixing pay of Shri Krushna Chandra Pandey, Jr. Clerk as per 5th and 6th CPC report and payment of arrears thereof and in transferring him to his parent department is legal and justify? To What relief the Union/workman is entitled?”

2. The case of the Union (2nd party) as per statement of claim (Ext.6) is that the workman Shri K.C. Pandey working as junior clerk is bonafide member of the Union (PRKP). The union raised chartered of demand for grant of fifth and sixth pay commission recommendation benefits and payment of arrears to Shri K.C. Pandey and also prayed to transfer him to his parent department. The conciliation effort failed before the conciliation officer and failure report sent to the appropriate government followed by reference order for adjudication by the Tribunal. Further case is that Shri K.C. Pandey was initially appointed as Khalasi on 08.06.1976, having his lien in CWM Engineering workshop, Kota. In 1988, he was promoted as junior clerk and transferred from CPM Jaipur to CPM Ahmedabad. At Ahmedabad Shri K.C. Pandey joined the services in S&C department and working in Ahmedabad construction department continuously and uninterruptedly. Shri K.C. Pandey after getting due promotion has been transferred with specific condition that his transfer is maintained in lien in CWM Engineering workshop. On this condition he was promoted and transferred from CPM Jaipur to CPM, Ahmedabad. In the year 2001, Shri Pandey was reverted and 1st party intends to send him back at his original place at Kota where he got promotion and was transferred to Ahmedabad. Shri K. C. Pandey approached CAT, Ahmedabad by filing OA No. 376/2001 and the CAT, Ahmedabad passed order restraining the 1st party employer from transferring by passing his lien department. Then the 1st party employer decided not to transfer K.C. Pandey from Ahmedabad to original place of appointment at Kota. Since then 2002, Shri K.C. Pandey is continuously and uninterruptedly working with the 1st party employer as junior clerk in construction. Further case is that Shri K.C. Pandey was promoted from Khalasi to junior clerk in 1986 and he was transferred from Kota to Ahmedabad in the year 1998. But the 1st party employer did not grant any benefit to him at par with his similarly situated workman of completing services of 9, 18 and 27 years. There is circular that if a workman completes 5 years of satisfactory service with the employer then he is entitled for increment in the

pay scale, but Shri K.C. Pandey was not granted increment. Some of the junior workman have become most senior as they have been granted promotion. The 1st party employer on demand made for release of 5th and 6th CPC and for increment then in drastic action the 1st party employer has transferred Shri K.C. Pandey without any reason of transfer in the interest of administration from Ahmedabad to Kota after a period of 13 years. The seniority of Shri K.C. Pandey is maintained in the construction unit of Ahmedabad Division and if he will again be transferred, his seniority will be adversely affected and that retirement of Shri K.C. Pandey is in near future. There is rule prevailing in the 1st party employer to post the workman at his choice of place whose retiring age is near. Further case is that if the management of the 1st party wants to again transfer him to Kota then according to rules, the employer has to grant promotion and to pay him higher scale if not then the employer cannot transfer Shri K.C. Pandey from Ahmedabad to Kota. The case of the workman Shri K.C. Pandey is sheer victimisation because he raised dispute though the union. Further case is that Shri K.C. Pandey is a protected workman under the provision of I.D. Act. Further case is that other workman who have been initially transferred from Kota to Ahmedabad are working in Ahmedabad in construction division and only Shri K.C. Pandey has been transferred from Ahmedabad to Kota and thus the 1st party employer has adopted pick and choose method. On these grounds, prayer is made to allow the reference and to direct the 1st party employer to grant the benefit of fifth and sixth pay commission recommendation to workman Shri K.C. Pandey and to direct the 1st party employer to continue the workman at his original place at Ahmedabad for payment of arrears of pay from date of his juniors have been granted the said benefits and to any other relief to which Shri K.C. Pandey is found entitled.

3. Along with the filing of statement of claim on 28.07.2011 by the 2nd party Union, the concerned workman Shri K.C. Pandey filed I.R. application u/s. 10(4) of the I.D. Act (Ext.2) through the union that the dispute which has been referred by the appropriate Government to this C.G.I.T.-cum-Labour Court, Ahmedabad along with issue of transfer is also seized by the competent authority. Therefore, the 1st party employer cannot proceed further in view of chargesheet dated 07.07.2011 issued by the 1st party No.3 and so the action of the 1st party employer to issue show cause notice/chargesheet dated 07.07.2011 is exceeding its jurisdiction and required to be quashed and set aside. On these grounds, praying to stay the departmental proceeding initiated by the Asst. works Manager (general), Kota (Rajasthan) vide letter dated 07.07.2011 and for directing the 1st party employer not to proceed further in view of notice dated 07.07.2011 till the reference in

adjudicated finally by this Tribunal. A show cause notice was issued to the 1st party employer asking to show cause on 04.08.2011 as to why not the relief prayed for in Ext.2 be granted. The 1st party failed to show cause by stipulated date 04.08.2011, then order (Ext.7) dated 04.08.2011 was passed directing the 1st party including the Asst. works Manager (General) Kota to maintain statusquo upon letter dated 07.07.2011 until further order by not taking coercive steps against the workman Shri K.C. Pandey. The 1st party were directed to file its show cause /reply to the I.R. application and also to file written statement to the statement of claim by 05.09.2011 fixing for hearing on merit of the interim application (Ext.2). The period of interim relief was extended on 05.09.2011 when the 1st party failed to submit reply. Then on 21.09.2011, the 1st party submitted written statement and reply to interim relief (Ext.11). But the 1st party did not turn up for final hearing on interim relief application (Ext.2) and the statusquo order continued against the 1st party. Then the 1st party filed an application (Ext.25) for vacating interim relief granted vide order dated 04.08.2011 and its copy received by the Union/2nd party and the 2nd party union filed rejoinder to application (Ext.25) of the 1st party. Thereafter vide detailed order passed by this court dated 21.08.2012 (Ext.28) the application at Ext.25 of the 1st party was rejected and the statusquo order dated 04.08.2011 was extended/confirmed till the disposal of this reference case. Then the management of the 1st party preferred S.C.A. No. 12802 of 2012 against the order dated 04.08.2011 whereby statusquo granted by this tribunal and against the order dated 21.08.2012 by which application of the 1st party was rejected for vacating the statusquo order and extending/confirming the same until disposal the reference case and the Hon'ble Gujarat High Court by order dated 07.12.2012 held that.....“The Chief works Manager, Western Railway, Kota (Rajasthan) has issued charge sheet against the respondent (Shri K.C. Pandey) dated -7.-7.2011 during the pendency of the reference alleging regarding misconduct on part of the respondent for his unauthorised absence and he is transferred place at Kota but the said transfer order besides other dispute so referred by the appropriate Government and pending under this reference case. Considering the overall facts and circumstances the order passed by the Tribunal/Labour Court is just and proper. The petition is devoid of merits and the same is dismissed. The Hon'ble Court directed to this tribunal to dispose the pending reference proceedings within a period of one year from the date of the receipt of the order of this Court.....”

4. The case of the 1st party interlia as per written statement dated 21.09.2011 (Ext.11) is that the dispute referred for adjudication is legally not maintainable under the laws, the demand of pay as per 5th and 6th pay commission is not an Industrial dispute. The 2nd party

(union) has no legal right to raise industrial dispute as the Union (P.R.K.P) is not come with clean hands and has concealed true facts. The transfer/repatriation is prerogative of the employer and also part of service conditions and that transfer is administrative function and this tribunal is not appellate authority to quash or set aside the transfer order of railway Administration. Transfer order can be challenged only on the ground of being malafide or victimisation. P.R.K.P. is not recognised Union and only recognised union office bearers can claim the status of protected workman. Further case is that Shri K.C. Pandey was initially appointed under CWM-Kota in the year 1976 as Khalasi, before that he was engaged as casual labour , Group 'D' on 08.07.1976 and on completion of statutory period he was granted temporary status on 02.11.1976 by AWM(workshop) Kota vide letter No. E/ 891/2/VOL III dated 12.04.1982 pay was fixed in the time scale of Rs. 196-232. He was then promoted on adhoc basis as Helper/Khalasi in grade of Rs. 210-296 on pay of Rs. 218/- By office order of AWM/Kota dated 08.02.1985 he was promoted as Jr. Clerk on adhoc basis and was posted in the time office w.e.f. 01.05.1985. By office order dated 30.05.1985 issued by AWM/Kota Shri K.C. Pandey was reverted to his original post of Khalasi/Helper and he worked as Helper/Khalasi till 29.11.1986. On request Shri K.C. Pandey was posted in Railway Electrification project in scale of Rs. 196-232 in mill writ shop of Kota workshop with the lieu of Kota workshop having lien under (CWM/Kota) parent Unit. The Railway electrification was a project work and on completion of Railway Electrification project to avoid retrenchment Shri K.C. Pandey was promoted as adhoc Jr. Clerk in the scale Rs. 260-400 vide order dated 25.11.1986 and was posted on available vacant post and was directed to attend project work at different station and division. On completion of said project he was posted under Dy. CSTE (C) Jaipur vide letter dated 11.07.1991 in adhoc capacity and subsequently posted under Dy. C.E. (C) Falna. From there Shri K.C. Pandey was transferred and posted under CPM/ADI on a different project and he was transferred under Dy. CE (C) II ADI on 15.11.2000 and posted as junior clerk in Establishment section. Further case is that Shri K.C. Pandey was substantively holding a Group D post and lien was maintained by chief works manager, Kota. Chief Project Manager, Ahmedabad is a project unit and on the need base and availability of funds from central Government either engage staff or obtain staff from the different units/divisions on deputation. The workman Shri K.C. Pandey was transferred to his parent post, whose lien is there on administrative ground with the approval of competent authority. The lien and seniority of an employee working in construction organisation remains with parent division/Unit of the employee. The posting in S&C department will be on deputation basis and he will be liable to be repatriated to his original department without assigning any reason or expiry of currency of

post held by him or closer of project whichever is earlier. The transfer order of Shri K.C. Pandey to his parent unit has been issued within the rules and with the approval of competent authority without any prejudice and Shri Pandey has already been relieved from the office of Dy. C.E. (C) GPL/A.D.I. long back. The fixation of wages as per 5th and 6th pay commission and the statutory remedy in the department is available and so does not fall within the purview of Industrial Dispute. P.R.K.P. is not recognised union but is only a registered union and that unrecognised Union has no right to submit names of office bearers to the competent Authority and so Shri K.C. Pandey is not protected employee. More so, the Union (P.R.K.P) has not submitted names of office bearers to have status of protected workman. The order of repatriation to parent unit was challenged by Shri K.C. Pandey in the year 2001 before CAT, Ahmedabad but by the order of Hon'ble Bench of CAT, Shri K.C. Pandey was not granted relief and so the present ground in the terms of reference for adjudication is barred by delay, acquiescence and estoppel on these scores prayer is made to dismiss the reference since the 2nd party/Union /workman is not entitled to any relief.

5. In view of the rival contention of the parties in respective pleadings, the following issues are taken for discussion and determination :-

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2nd party valid cause of action to raise industrial dispute in this case?
- (iii) Whether the case is barred by laches, acquiescence and estoppel?
- (iv) Whether the demand of fixation of pay as per 5th and 6th pay commission with payment of arrear is not an industrial Dispute and whether non-payment of wages falls under the purview of pre-existing right and whether remedy is available under section 33 C (2) of the I.D. Act, 1947?
- (v) Whether parent unit of the concerned workman Shri K.C. Pandey was Loco shed of Kota Division or Kota workshop? Whether his parent Unit at Kota has ever asked for return lien of Shri K.C. Pandey working at Project G.P.I. under Dy. Chief Engineer (C) G.P.I., Ahmedabad? Whether the transfer order dated 09.06.2009 is malafide on part of the 1st party No. 1&2 or was in response of call of lien by parent unit of Kota by way of repatriation?
- (vi) Whether the action of the management of the 1st party No. 1 & 2, Western Railway, Ahmedabad in not fixing pay of Shri K.C. Pandey, junior clerk as per 5th & 6th C.P.C. report and payment of arrears thereof is legal and justified?
- (vii) Whether transfer order of the 1st party Shri K.C. Pandey vide order dated 9.06.2009 to his parent department is legal and justified?
- (viii) To what relief the 2nd party/Union/workman Shri K.C. Pandey is entitled to?

FINDINGS

6. ISSUE NO. (v):- The 2nd party Union filed 11 documents as per list Ext. 9 which are Ext. M-9/1 to 9/11. These are copy of transfer order dated 10.05.2001 of the 1st party from Jr. Clerk to Khalasi at his parent unit, Kota for further posting (Ext. M-9/1) Ext. 9/2 is order of CAT dated 27.0-9.2002 in O.A. No. 376/2001 Ext.9/3 is copy of order dated 21.10.2003 of the 1st party retains Shri K.C. Pandey in construction organisation and posted in stores section Dy. CE(C) 1 ADI's office with approval of competent authority. Ext. 9/4 is charter of demand of P.R.K.P. includes strike notice dated 17.08.2006. Ext. 9/5 is copy of letter dated 30.03.2009 of D.R.M., Kota to A.L.C. regarding workman K.C. Pandey in connection with claim of fixation of pay under 5th C.P.C informing Shri K.C. Pandey never worked in this office. Ext. 9/6 is copy of relieving order dated 09.06.2009 of Shri K.C. Pandey Jr. clerk issued by office of Dy. Chief Engineer (C) GPI. Ext. 9/7 is copy of submission of list of protected workman of P.R.K.P. submitted to the G.M., Western Railway, Churchgate, Mumbai-20 dated 24.03.2010. Shri K.C. Pandey a Sl. No. 75 Jr. Clerk, Dy. CEC A.D.I showing him as branch secretary. Ext.9/8 is copy of letter dated 08.12.2009 of P.R.K.P. (Union) to A.L.C. (Central) Ahmedabad to take action u/s 31 of the I.D. Act, informing that during pendency of industrial dispute, the Dy. C.E.C. A.D.I. has relieved K.C. Pandey when dispute regarding of fixation of pay under 5th CPC is long pending. Ext. 9/9 is letter dated 04.01.2010 given to Dy. A.L.C. (Central) regarding violation of service condition of K.C. Pandey. Ext. 9/10 is copy of conciliation proceeding by ALC (C) A.D.I. before the representative of the 1st party and president P.R.K.P.. Ext.11 is copy of letter of A.L.C (Central) dated 30.08.2010 addressed to the Dy. Chief Administrative officer (Construction) Western Railway, Churchgate, Mumbai requesting to study the details of case of workman K.C. Pandey who is having few years to retire to consider his case and to advice officials of Ahmedabad to take favourable decision which will give justice to Shri K.C. Pandey, workman. On the other hand, Annexure-A, B and C are the same documents ass Ext.9/4, 9/6 and 9/2.

7. The 1st party has submitted with list (Ext.13) copy of decision S.C , A.I.R. 2002 S.C. 2279, (2007) (8) S.C.C., 150, (2009) 11 S.C.C. 678 and (2009) 15 S.C.C. 178 as Ext. M-13/1 to 13/4. Ext. 13/5 is letter of H.O. Mumbai on subject recognition to trade union on western Railway with votes obtained. Ext. 13/6 is letter of G.M. W.R., Mumbai to A.L.C. (Central) informing the A.L.C., Central, New Delhi is empowered to declare the office

bearers of registered trade union as protected workman. Ext. 13/7 is H.O., Churchgate W.R. letter dated 02.06.2011 on the sub strike notice dated 02.06.2011 of union P.R.K.P. over transfer of Shri Manish Viradia OS-11 informing that H.O. only consider the office bearer of recognised union as protected workman and that P.R.K.P. is registered Union but not recognised so A.L.C. (Central) New Delhi is empowered to declared protected workman of unrecognised Union.

8. The concerned workman Shri K.C. Pandey in his affidavit (Ext. 14) in lieu of examination in chief states vide para 5 his transfer order is not in the interest of management and that impugned order is issued by the 1st party employer because he is active office bearer of the Union and also protected workman and has raised charter of demand regarding grant of benefit of 5th and 6th pay commission recommendation. Vide para-7 he is class III employee working in the establishment of the 1st party No. 1 & 2 since 1998 till date in Ahmedabad. Prior to this he was working as Khalasi from 08.06.1976 and that Kota Division after giving him promotion from Khalasi to clerk transferred him to Ahmedabad construction area. He is continuously and uninterruptedly working with 1st party No. 1 & 2 and that question of implementation of order of CAT of the year 2002 does not arise when the order is already implemented by the 1st party vide order dated 02.10.2003 vide para 8 he is protected workman declared for the year 2009-10 vide para-11 he states that the impugned transfer order dated 09.06.2009 is nothing but the colourable exercise of power and with a view to victimise him and that all his juniors workman are working in the same place where as he has been transfereed without cogent reason. During cross examination at para 15 he says that when he was working at Kota workshop as khalasi he was promoted as junior clerk. Vide para 16 his lien is at Kota where he was appointed and that seniority, promotion and other matter under lien. Vide para-17 he says Rly. Dept. passed order for transfer from Ahmedabad to Kota but during pendency of dispute seized before appropriate Government and the Rly. did not issue pass. He is not being taken back in job by the 1st party and he is not getting salary.

9. 1st party adduced oral evidence of two witness through affidavit in lieu of examination in chief Ext. 33 and 35. The witness Smt. Gulshan A. Sharma She during cross examination by Union (2nd party) states vide para-7 that Shri K.C. Pandey in the year 1976 was appointed in Kota Loco shed and he got T.S. on 02.11.1976 and that he became regular by working in Kota loco shed and in 1979 he was transferred to Kota Rly. Factory. She admits that Shri K.C. Pandey was transferred in the month of October, 1998 to Ahmedabad project and that seniority list of workers is made those working in project and that seniority list of workers is made those working in project from the Unit where lien of concern workman

exist and the parent department used to issue order of seniority list. She also admitted that in project extra promotion was given to borrowed workman but it has been stopped since four –five year. The 1st party witness vide para 8 admits it is true that Kota Division never call back Shri K.C. Pandey that you are going to be promoted or that your promotion is under consideration She admits that every employee got Rs. 10,000/- as per 5th pay recommendation but Shri K.C. Pandey was not given vide para-9 She admits that since 1987 Shri K. C. Pandey did not get any increment and for this Shri K.C. Pandey raised demand before A.L.C. (central) Ahmedabad. Vide para 11 this witness stated it is true when transfer order of K.C.Pandey to Kota was issued the demand matter was pending before A.L.C. (Central). It has been also admitted by the 1st party witness vide para -12 it is true that K.C. Pandey was not given/sent Rly pass on his impugned transfer and vide para-13 Shri K.C. Pandey had put the matter before the 1st party (No.1&2) that his matter is pending at Ahmedabad and so he may not be transferred. Vide para-15 it has been stated it is true that the management of the 1st party did not follow any request, instruction and became adamant to transfer Shri K.C. Pandey to Kota and that it is true those employee who are about to complete 60 years are allowed to retire from project and all relevant papers are got filed by welfare Inspector who took of those papers. Vide para 16 as per Railway Scheme those who did not get promotion that their grade will be changed on 10 year, 20 year and 30 years and grade pay will be increased. It is true that neither Ahmedabad construction Department not Kota Rly. Department gave benefit of aforesaid scheme to Shri K.C.Pandey. Vide para 19 She states She cannot tell that concerned Rly. Department in order to harass Shri K.C. Pandey issued his transfer order to Kota. Vide para-21 She Shows ignorance that Kota Division never sent letter to repatriate Shri K.C. Pandey to Kota. The witness also concedes that officials of Kota Karkhana reverted Shri K.C. Pandey as Khalasi from Jr. Clerk and issued chagesheet upon him during pendency of this reference case before the tribunal. She cannot say that Rly. Department has done injustice with Shri K.C. Pandey. It is not true that the transfer order is illegal since it was for Kota workshop and not for Kota Division.

10. The evidence of other witness of the 1st party namely Shri Chandra Prakash Yadav O.S. WRS. (Wagon Repair shop) Kota is that Shri K.C. Pandey was appointed at CWM, Kota and had not resumed duty at his parent department since 10.06.2009 though his lien was at parent department, Kota and he remained unauthorisedly absent. He states that Kota Division has issued office order dated 24.08.2012 to the effect that Shri K.C. Pandey was relieved from construction department, Ahmedabad on 09.06.2009 but did not join his parent department at Kota till date.

This order has been issued during pendency of this reference case where Shri K.C. Pandey deposed in oral evidence in support of case through affidavit (Ext.32) dated on 03.10.2011 and cross examined on 15.10.2012. The document of the 1st party R/2 dated 30.04.2010 go to show designation of Shri K.C. Pandey Jr. clerk whereas R/3 order dated 24.06.2012 shows Shri K.C. Pandey as Khalasi, where in admitted position is this that Shri K.C. Pandey was promoted as junior clerk by Kota division itself so how he can be reverted to the post of Khalasi by Chief Factory Manager, Kota in his office order. This witness also admits vide para-5 (cross examination) that Shri K.C. Pandey on 08.07.1976 was appointed in Kota Loco shed, and in 1979 he was transferred to Kota Karkhana. Kota, Loco Shed and Kota Karkhana are separate unit and seniority of these units are separate. He says that since Shri K.C. Pandey did not join in Kota Karkhana so he was not given benefit of M.A.C.P. scheme 2009. Vide para-8 this witness admits that Kota Rail karkhana did not sent and letter to Ahmedabad project office to send Shri K.C. Pandey to Kota who is on lien vide para 10 admits that since 1986 Shri K.C. Pandey has not been given increment and that Shri K.C. Pandey has crossed age of superannuation even then he has not been given retiral benefits since D.A.R. is pending against Shri Pandey at Kota. Vide para 11 Shri K.C. Pandey was engaged in Loco shed, Kota but he was made permanent at Kota Rail Karkhana and so his lien is kept at Kota Rail Karkhana.

11. It has been submitted in the written argument of the 1st party dated 02.12.2013 that Shri K.C. Pandey has been repatriated to his parent department CWM (Engg.) workshop, Kota with immediate effect vide order dated 09.06.2009 and the said order was issued on administrative ground and that the transfer/repatriation is prerogative of employer and also part of service condition and that transfer order can be challenged only on the ground of being malafide or victimisation. On the other hand, it is submitted in written argument of the 2nd party Union dated 02.12.2013 that as per admission of the 1st party witness Smt. Gulshan Sharma that K.C. Pandey was appointed in loco shed, Kota and not in CWM. Engg. Workshop, Kota and so his parent department must be loco shed, Kota. It has also been submitted that the parent department has not asked for though correspondence to construction department, Ahmedabad to recall lien of Shri K.C. Pandey, and more so, project work at Ahmedabad has not closed and that in the year 2006 Shri K.C. Pandey through the Union (P.R.K.P.) has raised charter demand for fixation of pay of Shri K.C. Pandey, Jr. Clerk as per 5th and 6th C.P.C. report and that the conciliation officer had directed to consider the demand and when conciliation matter was pending before the A.L.C. (Central) Ahmedabad, suddenly

issuing order of transfer dated 09.06.2009 and relieving Shri K.C. Pandey when the matter was seized before the appropriate Govt. clearly appears to be malafide, on part of the 1st party No. 1 & 2 in order to victimise the concern workman Shri K.C. Pandey whose lien has not been recalled by parent department, Kota and so in absence of recall of lien, the order of transfer in the garb of repatriation appears to be unjustified and illegal. It has been further argued by the 2nd party Union that during pendency of the reference case issue of chargesheet dated 07.07.2011, on the ground of unauthorised absence from Kota parent department since after relieving on 09.06.2009 which had not come into force since the dispute was seized before appropriate Government certainly malafide intention of the 1st party to any how frustrate the reference case to be infructuous add towards malafide action for victimising Shri K.C. Pandey.

12. The 1st party lawyer as per written argument has submitted that the demand of pay as per 5th and 6th pay commission is not industrial dispute U/s 10 of the I.D. Act rather such demand fall under purview of existing right and remedy is available to claim under Section 33 C(2) of the I.D. Act. On the other hand it has been submitted in the written argument of the 2nd party that the 1st party has not challenged the reference order of the appropriate Government before the Hon'ble High Court of Gujarat and so such contention raised before this tribunal has no leg to stand and that the law is settled by the Hon'ble Apex Court that when dispute is referred for adjudication the tribunal has to answer either in affirmative or in negative and the tribunal cannot examine the legality and validity of the reference.

13. The contention raised by the lawyer of the 1st party in written argument that 2nd party Union P.R.K.P. is not recognised Union over Western Railway and so 2nd party has no right to raise charter of demand has no leg to stand. Because P.R.K.P. is registered union and used to take up the cause of aggrieved workman at the hands of employer of western Railway and more so as per Trade Union Act, 1926, the union is defined as a registered Trade union and the legislature has not used the word Recognised Trade Union and so any registered Trade Union can raise an industrial dispute on behalf of the workman and that right has also been guaranteed under the constitution of India. So it was also incumbent upon the management of the 1st party to consider the demand of pay fixation in which the 1st party have palpably failed. It was the duty of the 1st party No. 1 & 2 to take up the grievances of fixation of pay of Shri K.C. Pandey at their own level where he was working in construction department since 1998 and more so, he was promoted as Jr. Clerk by his parent department at Kota and had been transferred to construction department as borrowed employee since his lien is at Kota. If, 1st party no. 1 & 2 was unable to resolve the demand then correspondence with parent department ought to have

been made for fixation of pay and more so, the parent unit of Shri K.C. Pandey has not made correspondence for recall of lien of Shri K.C. Pandey working in construction department, Ahmedabad under 1st party No. 1 & 2 and so during pending of dispute when the dispute was raised before the appropriate Government on submission of failure report of A.L.C (Central) Ahmedabad and paying no heed to the request of conciliation officer is certainly malafide action on part of the 1st party No. 1 & 2 to suomotto transfer Shri K.C. Pandey to Kota with the wording of repatriation. The concern workman Shri K.C. Pandey has not prayed/represented for his repatriation before his parent unit or before the construction department A.D.I. under 1st party No. 1 & 2.

14. Thus upon consideration the evidence oral and documentary and also submission of parties in the foregoing, I am of the considered views that in the instant case it has to be considered this much that the parent unit of the concerned workman Shri K.C. Pandey is at Kota and it is immaterial at present whether his lien is with loco shed, Kota or Kota workshop. So, I find and hold that Shri K.C. Pandey was given promotion in Jr. Clerk by his parent unit at Kota and he was transferred on lien at construction dept., Ahmedabad under 1st party employer No. 1 & 2 and was working since 1998 and that his parent unit at Kota has not made correspondence asking for return lien of Shri K.C. Pandey to parent unit from project G.P.I. Ahmedabad. So, I further find and hold that the transfer order dated 09.06.2009 in the garb of suomotto repatriation of Shri K.C. Pandey to parent unit Kota when the dispute was pending at Ahmedabad with construction dept. as to demand of pay fixation as per 5th and 6th C.P.C. with payment of arrears and the works of project had not come to closure is quite malafide for victimising Shri K.C. Pandey anyhow by degrading his post as Khalasi where as he had been promoted as Jr. Clerk by parent unit, Kota and he was working also as Jr. Clerk at construction dept. since long back. This issue is answered against the 1st party.

15. **ISSUE NO. (iv) and (vi):-** In view of the findings in the foregoing paras while deciding issue No (iv). I further find and hold that the demand of the 2nd party (Paschim Rail Karmachari Parishad for fixation of pay as per 5th and 6th C.P.C. with arrear of pay to the concern workman Shri Krushna Chandra Pandey is an industrial dispute referred under reference order for adjudication and the union/concern workman has no pre-existing right available for case U/s. 33 C(2) of the I.D. Act, 1947. I further find and hold that the action of the management of the 1st party No. 1 & 2, Western Railway, Ahmedabad in not fixing pay of Shri K.C. Pandey, Jr. Clerk as per 5th and 6th C.P.C., report and payment of arrears thereof is not legal and justified. These issues are answered accordingly.

16. **ISSUE NO. (vii):-** In view of findings to Issue No. (iv) in the foregoing, I further find and hold that issuing transfer order by the 1st party No. 1 & 2 of Shri K.C. Pandey vide order dated 09.06.2009 to his parent unit Kota is not legal and justified. This issue is answered against the 1st party.

17. **ISSUE NO. (vii):-** In view of the findings to issue Nos. iv,v,vi and vii in the foregoing also considering that this issue is ornamental and the 1st party has not pressed in his written argument and so it is held that this reference case is not barred by latches, acquiescence and estoppel. This issue is decided in negative.

18. **ISSUE NOs. (i) & (ii):-** As per findings above, I further find and hold that the reference is maintainable and the 2nd party (P.R.K.P. union) has valid cause of action to raise dispute for redressal of grievances of the concerned workman Shri Krushna Chandra Pandey.

19. **ISSUE NO. (viii):-** I further find and hold that the concerned workman who has admittedly crossed the age of superannuation at the age of sixty has been immensely victimised by the 1st party in not fixing his pay as per 5th and 6th C.P.C. report and not paying arrears accrued to him even working under 1st party No. 1 & 2 and having his lien by parents unit Kota not recalled. I further find and hold that the concerned workman is entitled for annual increment which has admittedly not been released to him since 1987 as admitted by 1st party witness Smt. Gulshan Sharma at para 9 of cross exam. I further direct the 1st parties to grant benefit of 5th and 6th pay commission recommendation to Shri Krushna Chandra Pandey with payment of arrears (as per recommendation of pay commission. The transfer order dated 09.06.2009 in the garb of repatriation to parent unit Kota during pendency of dispute seized before the appropriate Government is illegal and unjust and so this order is set-aside. The concerned workman Shri K.C. Pandey was about to reach retiring age and as per rule even such employee in construction department having lien at other place has to be allowed also considering that he is office bearer and protected workman for his continuance till he retire from construction project which was denied by the 1st party and so the 1st parties are directed to treat the concerned workman throughout on duty till his retirement and are further directed to release the pay for the intervening period till he reached the age of retirement at G.P.I. Ahmedabad, since the concerned workman has suffered much mental agony and financial crisis. The 1st party No. 3 is permanently restrained from starting departmental enquiry as per DAR for issuing charge sheet dated 07.07.2011. Since the concerned workman Shri K.C. Pandey is directed to be treated on duty at G.P.I. Ahmedabad so his relieving order dated 09.06.2009 by the 1st party No. 2 is held to be redundant and ineffective and as such there is no question of initiating DAR proceeding by issuing

charge sheet dated 07.07.2011 regarding misconduct of absenteeism from parent unit, Kota or regarding issue of office order dated 24.06.2012 by Chief workshop manager, Kota for accepting lien of Shri K.C. Pandey in the cadre of Khalasi where as Shri Pandey had been promoted from Khalasi to Jr. Clerk at Kota. Further the 1st party No. 3 is directed to fix the lien of the concerned workman in clerical cadre for the purpose of releasing retiral benefits from the parent units. The 1st parties are further directed to implement the award within two months of receiving the copy of award otherwise the arrear pay will carry interest @ 9% P.A.

The reference is accordingly allowed. No order of cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2514.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 32/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-20012/48/2008-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of B.C.C.L., and their workmen, received by the Central Government on 12-09-2014.

[No. L-20012/48/2008-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 32 OF 2008.

PARTIES : The Secretary,
United Coal Workers Union,
Pran Jivan School Road,
Gandhi Nagar, Dhanbad.

Vs.

General Manager
Sijua Area of M/s. B.C.C.L.,
PO: Sijua, Dhanbad.

Ministry's Order No.L-20012/48/2008-IR (CM-I)

Dt. 05.06.2008.

APPEARANCES :

On behalf of the : Mr. R.R. Ram, Ld. Advocate
workman/Union

On behalf of the : Mr. D.K. Verma, Ld. Advocate
Management

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 8th July, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/48/2008-IR (CM-I) dt. 05.06.2008.

SCHEDULE

“Whether the action of the Management of Basdeopur Colliery of M/s. B.C.C.L. in dismissing Sh. Ashok Paswan, Haulage Operator from the service of the Company w.e.f. 11.8.2006 is legal and justified? (ii) To what relief is the concerned workman entitled?”

On receipt of the Order No. L-20012/48/2008-IR (CM-I) dt.05.06.2008 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 32-2008 of was registered on 16.06.2008 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their Advocates respectively appeared in, and contested the case.

2. The case of sponsoring United Coal Workers Union for workman Ashok Paswan is that he was a permanent employee as Haulage Operator of M/s. BCCL. His service was unblemished. He fell sick on 3.3.2005 due to heavy coal dust in the ground. Though he reported the Colliery Hospital, no proper and adequate treatment could be given to him. He also reported the Management of his sickness. When he went to Civil Assistant Surgeon

Dr. Kishna Murari Singh, who on his diagnosis found him suffering from Pulmonary Tuberculosis, so the Doctor advised him for bed rest. The Doctor declared him medically fit for duty. When the workman reported for duty, he was served with a chargesheet dt. 5.4.2005 for unauthorized absence under clause 26.1.1. of the Certified Standing Orders of the Company, allowing him to reply within 48 hours. He submitted his reply with the medical certificate of his illness, denying the allegations levelled as constituting no misconduct against him. His reply was satisfactorily, yet the management appointed the Enquiry Officer to conduct the domestic enquiry. But the Enquiry Officer conducted the domestic enquiry violative of the principles of natural justice by disallowing him to cross examine the Management's witness. The Enquiry Officer submitted his report based on perverse findings without considering his Medical Certificate. The Disciplinary Authority passed the order of his dismissal illegal and unjustified. Moreover, the Disciplinary Authority had not initiated the departmental proceeding for major punishment. The punishment of his dismissal is shockingly disproportionate to the charge against the workman. His representation to the Management was also unconsidered. Finally, the Union raised the Industrial Dispute resulting in the reference for adjudication.

In the rejoinder filed on behalf of the workman, all the allegations of the O.P./Management have been specifically denied.

3. Whereas categorically denying the allegations of the workman, the case of the O.P./Management is that the reference is unmaintainable; the workman was issued the chargesheet dt. 5.4.2005 of the Certified Standing Orders. He also replied to it. But finding his reply unsatisfactory, on appointment of Sri A.N.P. Abasta, the Personnel Officer, as the Enquiry Officer by the Management, the domestic enquiry was fairly held in presence of the workman. After the Enquiry, the Enquiry Officer submitted his enquiry report, holding him guilty of the charges. Thereafter, on the second show cause notice with a copy of the enquiry report to the workman, the workman did not explain about it. So he was rightly dismissed from the service of the Company. The Management sought permission for firstly proving the fairness of the domestic Enquiry as preliminary issue, and also for adducing afresh evidence on merits in case the enquiry found unfair at the preliminary point. Moreover, on consideration of the workman's past attendance for three years - Nil, 66 & 17 days in the year 2002, 2003 and 2007 respectively, he was along a habitual absentee.

In rejoinder, it has been alleged by the O.P./Management that the workman never reported the Management of his sickness, though free treatment is imparted to a workman at the Colliery Dispensary, Regional

Hospital, and the Central Hospital. He did not produce any paper of his treatment along with his reply. So the workman is not entitled to any relief, as the action of the Management is legal and justified.

FINDING WITH REASONS

4. At the very outset, the fairness of the domestic enquiry has been held as per the Order No. 21 of the Tribunal, following its acceptance by Mr. R.R. Ram, Ld. Advocate for the workman through his petition. It resulted in hearing the final argument of both the parties on merits.

Mr. R. R. Ram, the Union Representative cum Advocate for the Union concerned for the workman submits that while workman was sick regularly, he was chargesheeted with a direction for his reply within 48 hours, and later on, he was dismissed from the service of the Company which not legally justifiable. Whereas Mr. D.K. Verma, Ld. Advocate for the O.P./Management has to contend that the workman absented from his duty w.e.f. 03.03.2005 unauthorisedly, for which after due enquiry, he was dismissed from the service on the proof of willful absentism charge. Further on the consideration of his past three years attendances - Nil, 66 and 17 days in the years 2002, 2003 and 2004 respectively, he was dismissed from the service of the Company, as he was a habitual absentee.

5. On perusal of the materials as produced on behalf of both the parties on the case record, I find that as the enquiry proceedings reveals the fact that the workman Ashok Paswan in his statement had fully justified his absence due to his illness affected with Pulmonary Tuberculosis (P.T), for which he was all along under treatment from 4.3.2005 to 19.10.2005, and such sickness of the workman in the Colliery usually affected in the Basdeopur Colliery where the workman had to work as the Haulage Operator. This fact also fully dealt with in the Enquiry Report. (Ext. M.4). Moreover, the enquiry proceedings nowhere deals with the previous records of workman's attendance.

Under these circumstances, I find that the dismissal of the workman appears to be horribly disproportionate to the nature of absentism of the workman. So the order of the dismissal (Ext. M.6) passed by the Management towards the workman is liable to be set aside.

In result, it is hereby, in the terms of reference, awarded that the action of the Management of Basdeopur Colliery of M/s. BCCL in dismissing Shri Ashok Paswan, the Haulage Operator from the service of the Company w.e.f. 11.08.2006 is quite illegal and unjustified. Hence, the workman is entitled to reinstatement in his service, but without back wages, maintaining the continuity of his service.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 70/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-20012/47/2002-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2515.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 70/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 12/09/2014.

[No. L-20012/47/2002-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of
I.D. Act, 1947

Ref. No. 70 of 2002

Employer in relation to the management of
Kustore Area M/s. BCCL

AND

Their workmen.

Present : SRI RANJAN KUMAR SARAN, Presiding Officer.

Appearances :

For the Employers : Sri U. N. Lall, Advocate

For the Workman : Sri S. C. Gour, Rep.

State : Jharkhand

Industry : Coal

Dated : 19/8/2014

AWARD

By Order No. L-20012/47/2002-IR (C-I), dated. 15/07/2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether denial of the benefit of special VRS (F) to Smt. Bandhia Devi and consequent denial of employment to her son by the management of Ena Colliery under Kustore Area of M/s. BCCL is legal and justified ? if not, to what relief is the concerned workman or her dependent entitled ?”

2. This Case is received from the Ministry of Labour & Employment on 02.08.2002. After receipt of reference both parties are noticed. The Sponsoring Union files their written statement on 12.08.2002. The management files their written statement on 25.09.2002. One witness each has been examined from both side. Document marked as W-1 to W-4 by the workman and M-1 to M-5 by the management.

3. The short point to be decided in this reference is as per female VRS Scheme. One lady workman applied for VRS and their male child applied for job in the place of the his mother.

4. The BCCL management did not act on the application of woman workman as a result of which, the lady workman retired, and virtually application for job of her dependent workman refused.

5. When the dispute arose it is argued by the management that there is no provision to give employment to his/her dependent of retired employee under VRS Scheme. But it is submitted by the female workman that as there case was not considered, his children are out of employment since more than 10 years and above.

6. Moreover the MW-1 in his cross examination stated that the copy of refusal of employment was not communicated to the workman. In this regard. no such document filed by the management to prove, that why his application is refused.

7. It is submitted by the workman, that they applied according to scheme within the period, and their claim should have been decided promptly. If it is delayed, the benefit would go to the workman.

8. But on scrutiny of documents, it is found that, the scheme is the female workman must be 58 years of old and the applicant in place of her job must be 18 years and above and below 35 years. But on the service excerpts of the female workman filed it is seen that the applicant for job in her place is aged 18 years (it is written after scored though the digit at its original place) and years of birth shown 1978. The scheme published in 1995 and the years of birth of the dependent is 1978.

9. If that is so at the time of applying for job in place of female employee her dependant's age was 17 years. Moreover cutting in service excerpts creates doubt. Therefore management rightly refused the claim.

10. Moreover female workman also completed her job under the management till her sixtieth years. Hence the claim of the workman is refused.

11. Considering the facts and circumstance of the case, I hold that the denial of the benefit of special VRS (F) to Smt. Bandhia Devi and consequent denial of employment to her son by the management of Ena Colliery under Kustore Area of M/s. BCCL is legal and justified. Hence he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2516.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 22 ऑफ 2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-20012/94/2009-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 22/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 12/09/2014.

[No. L-20012/94/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of
I.D.Act. 1947

Ref. No. 22 of 2010

Employer in relation to the management of
Sayal "D" Colliery Barka Sayal Area M/S CCL

AND

Their workmen.

Present : Sri RANJAN KUMAR SARAN, Presiding Officer.

Appearances :

For the Employers : Sri D. K. Verma, Advocate

For the Workman : Sri A. K. Pandey, Rep.

State : Jharkhand

Industry : Coal

Dated : 25/7/2014

AWARD

By Order No.L-20012/94/2009-IR (CM-I), dated. 11/02/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Sayal D Colliery, Barka Sayal Area of M/s. CCL in superannuating Shri Sahadat Ali Conveyer Khalasi Cat-III from the services of the company w.e.f. 21.7.2004 is justified and legal? To what relief is the workman concerned entitled?"

2. This Case is received from the Ministry of Labour & Employment on 08.03.2010. After receipt of reference, , both parties are noticed. The workman files their written statement on 22.03.2010. The management files their written statement on 07.12.2012. One witness each has been examined from both side.

3. The short point involved in this reference is that, whether the retirement of the workman on 21.07.2004 is just and proper. The workman to support his case examined himself as a witness. He is unable to speak his correct age. His approximate age as he said In his evidence is also confusing.

4. The concerned workman as witness (WW-1) further says that he raised the dispute of his age after the retirement . The law is well settled that any claim of age dispute at fag end of the job or after retirement can not be acceptable that it may be after thought.

5. Considering the facts and circumstances of this case, I hold that, in the absence of strong proof mere claim of premature retirement will not be entertained . Hence his claim is refused, he not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2517.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 57 ऑफ 1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-20012/275/1991-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 57/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL, and their workmen, received by the Central Government on 12/09/2014.

[No. L-20012/275/1991-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD.

In the matter of reference U/s. 10 (1) (d) (2A) of
I.D.Act. 1947

Ref. No. 57 of 1992

Employer in relation to the management of
Soyal Colliery, M/s. CCL,
AND
Their workmen.

Present: Sri RANJAN KUMAR SARAN, Presiding Officer.

Appearances :

For the Employers : None

For the Workman : None

State : Jharkhand

Industry : Coal.

Dated : 12/08/2014

AWARD

By Order No.L-20012/275/1991-IR (C-I), dated 29/07/1992, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Sayal Colliery of C.C. Ltd. P.O-Sayal, Distt. Hazaribagh. In not promoting Sri Ram Vyasan from Category-V to VI is justified? If not, to what relief workman is entitled ?”

2. After receipt of the reference, parties are noticed, Though they took steps for certain dates, the management & workman examined one evidence each. The management marked document M-1 & M-2. Subsequently the workman did not appear nor take any interest in the case. It is presumed that the disputes between parties have been resolved in the meantime. Hence No Dispute Award is passed.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2518.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखनी के पंचाट (संदर्भ संख्या 58/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/58/2009) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 12.09.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : Sri G. V. KRISHNAIAH,
Chairman-cum-Presiding Officer.

Tuesday, the 5th Day of August, 2014.

Industrial Dispute No. 58 of 2009

Between :

Gadham Mallesh,
Ex-Shot Firer, E.C. No. 0968575,
S/o. Mallaiah, 56 Yrs,
C/o. Sri B. Amarender Rao, Advocate, Raghupathi
Nagar, (Ganga Nagar)
PO : Godavarikhani,
Dist. Karimnagar.Petitioner/Workman.

And

1. The Superintendent of Mines,
SCCo. Ltd., GDK 1 & 3 Incline,
PO : Godavarikhani,
Dist. Karimnagar - 505209 (A.P).
2. The Chief General Manager,
SCCo. Ltd., Ramagundam Area 1,
PO : Godavarikhani,
Dist. Karimnagar - 505 209 (A.P).

3. The Director (P. A & W),
SC Co. Ltd., PO: Kothagudem,
Dist. Khammam (A.P.).
 4. The Chairman & Managing Director,
SC Co. Ltd., PO: Kothagudem,
Dist. Khammam. (A.P.).
- Respondents/Management.

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B. Amarender Rao, Advocate, for the petitioner and Sri D. Krishna Murthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following :

AWARD

1. This is a petition filed to set aside the dismissal order dt. 15.12.2008 issued by R3 and to direct the respondents to reinstate the petitioner into service with continuity of service, back wages and other benefits.

2. The allegations in the petition are as follows: Petitioner was appointed in the respondent company in the year 1972 as Badli Filler and later promoted as coal filler in the year 1973. Petitioner was promoted as Short Firer in the year 1977 and ever since he has been discharging his duties to the satisfaction of his superiors. Due to head injury sustained by the petitioner during the course of employment, petitioner suffered from severe ill-health during the year 2007 and on account of domestic problems i.e. unpleasant marital problems of his daughter and consequently court cases petitioner's health and mental condition deteriorated. He underwent regular treatments in the respondent company hospital, referral and private hospitals during the year 2006 and 2008. R-1 without considering the genuine ill-health condition of the petitioner issued charge sheet dt. 29-01-2008 under Company's standing order no. 25.25 alleging that

"Habitual late attendance or habitual absent from duty without sufficient cause" during the year 2007"

The charge sheet was served on the petitioner on 08-02-2008. Petitioner submitted his explanation dt. 11-02-2008 narrating his health problems and domestic problems and requested to refer him to medical board in view of his serious ill-health. But a farce of domestic enquiry was conducted on 20-02-2008 and show cause notice dt. 29-03-2008 was issued on R2 requiring the petitioner to submit his representation if any on the enquiry findings. Petitioner submitted his written representation dt. 07-04-2008 once again requesting the Management to consider his genuine ill-health and refer him to Apex Medical Board of the Company. Petitioner developed health problems from the year 2006 onwards. He underwent regular medical treatment in private hospitals and respondent company's hospital. On 01-07-2007 he was made unfit by SCCL Hospital and he was

given treatment from 01-07-2007 to 13-07-2007. He attended for duties for about (20) days in the month of August, 2007 but his health condition deteriorated and he reported sick and sent telegram to R1 on 27-09-2007. R-1 referred the petitioner to Area Hospital, Ramagundam where petitioner was given treatment till 12-04-2008 for "Malingering, heaviness of the head, giddiness, ed memory and fear, apprehension & ed concentration" etc. Petitioner was referred to Director, Institute of Medical health vide letter dt. 13.04.2008 and he was given treatment at Mental Hospital, Errgadda till May, 2008. The said Authorities sent back the petitioner to R2 Area Hospital vide their medical report dt. 02-06-2008. In the letter it was recommended that the petitioner be given a surface job where handling of explosive is not involved. Area Hospital Authorities referred the petitioner to CMS Main Hospital, Kothagudem regarding his fitness for duties vide letter dt. 02-07-2008. R-2 again wrote letter dt. 08-01-2009 for confirmation of petitioner's medical fitness/unfitness by Medical Board of the Company. Later medication and follow up treatment was denied to the petitioner by the respondents and even after lapse of 4 to 5 months period no further action was initiated for his medical unfit/fitness and giving surface job. Then the petitioner submitted representation dt. 14-05-2009 to R-2. Subsequently respondents victimized the petitioner and neither provided him surface job nor declared him medical unfit. To deprive the petitioner of his legitimate surface job or medical unfit benefits R-3 issued the dismissal order with effect from 25-10-2009. The material dates were altered in the said order by showing the dates 15-12-2008 and 25-10-2009. The order was served to the petitioner vide office memo dt. 25-10-2009 very recently. This is a very clear case of unfair labour practice and victimization. Petitioner participated in the enquiry and deposed about his ill-health condition. The domestic enquiry was not conducted fairly and properly. The findings of enquiry officer are cryptic and vague. There is reasonable and sufficient cause for the absence of petitioner during the year 2007. Petitioner served the respondent Company for 35 years without any remark. The dismissal order without issuing Show cause notice of dismissal from service is not sustainable. The punishment given to the petitioner is extremely harsh. Petitioner could not secure any alternative job and remained unemployed. Hence the dismissal order may be set aside and petitioner be taken into service with continuity of service, attendant benefits and full back wages.

3. Respondent No. 1 filed counter contending that this Tribunal has no jurisdiction as the Respondent Company is a Central Government Company and there is a separate tribunal at Hyderabad established by the Central Government. In Para "6" of the counter it is stated that the petitioner never reported sick in the Company's hospital and did not undergo treatment of head injury and he did

not sustain any head injury during the employment in the year 2007. If any such thing happened it would have been recorded in the Register maintained at the Mine. Petitioner reported sick at Area Hospital of Respondent Company on 01-07-2007 and made fit on 13-07-2007. Petitioner being an underground employee is expected to put in minimum of (190) musters in a Calendar Year but he failed to do so during the period from 2003 to 2008. The attendance of the petitioner from the year 2003 to 2008 is as follows:

Sl. No.	Year	No. of musters
1.	2003	111
2.	2004	104
3.	2005	101
4.	2006	110
5.	2007	18
6.	2008	NIL

Petitioner was issued charge sheet on 08-02-2008 regarding his unauthorized absence and he submitted his explanation on 11-02-2008. Therefore enquiry was ordered and petitioner attended the enquiry on 20-02-2008 and admitted the charges. Enquiry was conducted in a fair manner. On completion of enquiry petitioner was issued show cause notice dt. 31-03-2008 along with copies of enquiry proceedings and enquiry report, giving him an opportunity to make his representation if any. Petitioner gave reply on 07-04-2008 admitting the charges and requesting for cancellation of charge sheet. In Para No. 10 of the counter the details of the treatment taken by the petitioner from 01-07-2007 including the treatment at the Mental Hospital, Erragadda and referring to the Chief Medical Services, Kothagudem, are admitted. Issuing notice with proposed punishment is not a requirement of principals of natural justice and the standing orders of the respondent company do not speak about any such show cause notice. Unauthorized absence creates lot of hindrances to the productive work of the Company. Therefore the petition may be dismissed.

4. This Counter filed by Respondent No. 1 was adopted by respondents 2 to 4.

5. At the time of hearing, Ex.W-1 to W-14 have been marked on behalf of the workman and Ex. M-1 to M-10 are marked on behalf of the Management.

6. Written arguments have been filed by both parties. In the written arguments Advocate for the petitioner sought the setting aside of dismissal order and granting full back wages from the date of his unfit till his superannuation i.e., 01-07-2007 till 30-06-2012 or declaring the petitioner as medical unfit with effect from 01-07-2007. In the written arguments filed on behalf of the respondent the counter allegations have been reiterated.

7. Now the point for consideration is whether the petitioner is entitled to relief of reinstatement or any other alternative relief since the, petitioner attained the age of superannuation on 30-06-2012?

8. POINT : As per Ex.M-1 the charge against the petitioner is he was absent from duties without any sanctioned leave during the year 2007. It is an admitted fact in the counter and also in the documents filed by the petitioner that petitioner reported sick on 01-07-2007. On 27-09-2007 petitioner says that he issued telegram to his employer about his illness and in proof of the same he filed a telegraph office receipt which is marked as Ex. W-4. Respondents neither denied the receipt of telegram nor confirmed the receipt of telegram. On 12-02-2008 the Superintendent of Mines, Godavarikhani-I Incline addressed a letter to the Additional Chief Medical Officer, Area Hospital, Ramagundam that petitioner was absent from duties from 27-06-2007 and to advise his medical fitness to allow him for duty. Ex.W-6 photostat copy of the treatment particulars of the petitioner shows that in February, 2008 he approached the Area Hospital, Godavarikhani maintained by the respondents and he was treated till 06-04-2008. He was referred to the Director, Institute of Mental Health, Erragadda, Hyderabad as per Ex.W-7 addressed by Addl. Chief Medical Officer, Area Hospital, SCCL, Godavarikhani. On 02-06-2008 the Superintendent, Mental Care Hospital, Hyderabad addressed a letter stating the that petitioner responded to treatment and he may be given job which does not involve handling of explosives (petitioner was working as Short Firer involving the use of explosives prior to his becoming sick). Then a letter was addressed to C.M.S. Kothagudem, on 02-07-2008 to advise regarding his fitness. Copy of this letter is marked as Ex.W-9. On 14-05-2009 petitioner sent a representation to the Chief General Manger, RG-I, Godavarikhani that he may be sent to Company Apex Board, Kothagudem stating that after the letter dt. 02-07-2008 and another letter dt. 08-01-2009 he was not sent to the Medical Board, Kothagudem for confirming his fitness or declaring him unfit. In September, 2009 petitioner was allowed to work and he had worked for (8) days and he was given salary as can be seen from Ex.W-11. On 15-12-2008 an office order was passed dismissing the petitioner from service, w.e.f., 25-10-2009. This office order referred to the representation of petitioner dt. 07-04-2008. This representation is marked as Ex. M-9. At this stage the admissions of the respondents that petitioner suffered illness from 01-07-2007, referring to Institute of Mental Health, Erragadda and the recommendation of Mental Hospital Authorities that petitioner be provided surface job, have to be highlighted. There is no record to show that the petitioner was ever offered a surface job as recommended by the Mental Care Hospital Authorities. It

is not as though petitioner approached the Mental Care Hospital, Erragadda on his own. He was referred to that hospital through the Company Hospital only. The petitioner filed letter dt. 14-05-2009 requesting that he was declared as unfit through the Apex Medical Board. The Addl. Chief Medical Officer, Area Hospital, Ramagundam has examined the petitioner as can be seen from Ex.W-9.

9. With regard to the sending the petitioner to the main company hospital at Kothagudem to examine the fitness of the petitioner and with regard to providing the petitioner with a surface job as recommended by the Mental Health Hospital, Hyderabad, the respondents have not stated anything specific and they are evasive. When the petitioner was referred to Mental Health Hospital, Hyderabad who gave their opinion, the respondents should have informed the petitioner whether he will be provided a surface job or whether he will be treated as medically unfit. Respondents just kept quiet. So also regarding the sending of petitioner to the main hospital of the respondent company at Kothagudem. While the petitioner was going round hospitals and infact taking treatment as can be seen from Ex.W-6, he was issued show cause notice with regard to the enquiry report. The dismissal order dt. 15.12.2008 is completely silent about the period of medical unfitness of petitioner. The petitioner's plea that he was sick during the year 2007 can not be brushed aside because he reported sick on 1.7.2007 itself. The enquiry record does not make out that the petitioner was intentionally absent from duties. The enquiry report marked as Ex.M-6 is completely silent about the petitioner reporting sick on 01-07-2007. Therefore it is to be held that the attitude of the respondents towards petitioner, is to say the least predetermined and evasive. Therefore the dismissal order is liable to be set aside. Since the petitioner has attained the age of superannuation on 30-06-2012, the following order is passed.

10. In the result, award is passed holding that
- The dismissal order against the petitioner is set aside.
 - The petitioner is entitled to full back wages from 2.7.2008 i.e., the date on which letter was addressed to the main Hospital, Kothagudem regarding fitness of the petitioner.
 - The back wages are payable upto the date of superannuation i.e., 30.6.2012.
 - The petitioner is deemed to have retired on 30.6.2012 and he is entitled to all attendant benefits and continuity of service.

G. B. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman :— For Management :—

-Nil-

-Nil-

EXHIBITS

For Workman :—

Ex.W-1	Dt. 29-01-2008	Charge sheet, x. copy
Ex.W-2	Dt. 11-02-2008	Reply to charge memo, x. copy
Ex.W-3	Dt. 13-07-2007	Fit certificate from 1-7-2007 to 13-07-2007
Ex.W-4	Dt. 27-09-2008	Telegram receipt
Ex.W-5	Dt. 12-02-2008	Letter issued to ACOMO, Area Hospital, by SOM, GDK. 1 Incline regarding leave particulars of the petitioner, x. copy
Ex.W-6	Dt. 13-02-2008 to 12-04-2008	Medical treatment OP tickets (3) three sheets.
Ex.W-7	Dt. 13-04-2008	Letter addressed to the Director, Institute of Mental Health, Yerragadda, Hyderabad by the Addl. Chief Medical Officer, Area Hospital RG.
Ex.W-8	Dt. 02-06-2008	Letter addressed to the CMO, Area Hospital, GDK by the Supdt., Govt. Hospital for mental car, Hyderabad, regarding medical report of petitioner
Ex.W-9	Dt. 02-07-2008	Letter of Addl. CMO, Area Hospital, RG, regarding medical examination report of petitioner.
Ex.W-10	Dt. 14.05.2009	Representation of petitioner submitted to Chief General Manager, SCCL, RG-I.
Ex.W-11	Dt. -	Pay slip for the month of September, 2009
Ex.W-12	Dt. 25-10-2009	Office memo regarding name removal of petitioner
Ex.W-13	Dt. 15-12-2009	Dismissal order
Ex.W-14	Dt. 01-12-2009	Demand notice submitted to the Director, (PA&W), Kothagudem
For Management :—		
Ex.M-1	Dt. 29-01-2008	Charge sheet
Ex.M-2	Dt. 08-02-2008	Postal Ac., of petitioner
Ex.M-3	Dt. 11-02-2008	Reply to charge sheet

Ex.M-4	Dt. 17-02-2008	Enquiry notice
Ex.M-5	Dt. 20-02-2008	Domestic enquiry proceedings
Ex.M-6	Dt. 20-02-2008	Enquiry report
Ex.M-7	Dt. 28/31-3-2008	Show cause notice
Ex.M-8	Dt. 04-04-2008	Ack., to show cause notice
Ex.M-9	Dt. 07-04-2008	Reply to show cause notice
Ex.M-10	Dt. 15-12-2008	Dismissal order, x.copy

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2519.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/37/2007) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 12.09.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GODAVARIKHANI

Present : SRIG V. KRISHNAIAH,
Chairman-cum-Presiding Officer.

Wednesday, on this the 9th day of July, 2014

INDUSTRIAL DISPUTE No. 37 OF 2007

Between:-

SHAIK TAJUDDIN,
Ex.Badli Filler, E.C. No. 2895370,
S/o. Jani, Age 30 years,
C/o. Sri B. Amarender Rao, Advocate,
Q.No. ST2-370, Bus Stand Colony,
P.O. Godavarikhani,
Dist. Karimnagar-505209 (A.P.)

....Petitioner

And

- (1) The Colliery Manager,
S.C. Co. Ltd., RK-NT Incline,
P.O. Srirampur,
Dist. Adilabad (A.P.)
 - (2) The General Manager,
S.C. Co. Ltd., Srirampur (P) Area,
P.O. Srirampur,
Dist. Adilabad (A.P.)
 - (3) The Chairman & Managing Director,
S.C. Co. Ltd., P.O. Kothagudem,
District Khammam (A.P.)
- ... Respondents

This case coming before me for final hearing in the presence of Sri B. Amarendar Rao, Advocate for the petitioner and of Sri D. Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Court delivered the following:-

AWARD

This petition is filed U/Sec. 2-A(2) of the Industrial Disputes Act, 1947 to set aside the dismissal order dt. 19-11-2002 passed by the 2nd respondent against the petitioner and direct the respondents' company to reinstate the petitioner into service as Badli Filler with continuity of service, all other consequential attendant benefits and full back wages.

2. The averments of the petition are that the petitioner was appointed as Badli Filler by the respondent company in the year 1996. Ever since the date of appointment, the petitioner was discharging his duties to the utmost satisfaction of the company authorities. The petitioner had put in more than the required 100 physical musters every year, ever since his appointment in the year 1996 to till the year 2000. He worked hard and put up good attendance. The petitioner participated in the sports on behalf of the respondents' company. While so, during the course of such participating in the sports on behalf of the company in the year 1999, the petitioner sustained leg injury in the knee joints. He took medical treatment in the company's hospitals for the leg injury in the knee joints sustained by him during the course of his employment i.e., participating in the sports on behalf of the respondents' company. As per the advice of the doctors due to the said leg injury, the respondents provided General Mazdoor job to the petitioner from 1999 to 2000 and paid category-I wages.

3. The petitioner was taking continuous medical treatment in the company hospitals in the years 1999 and 2000 for his leg injury in the knee joint, while performing the alternative General Mazdoor light duty by receiving category-I wages. During the year 2001, the 1st respondent forced the petitioner to go to under ground mine and do

the coal filling duty, which is very strenuous. The 1st respondent without considering the true facts and ill health condition of the petitioner in the year 2001, issued charge sheet under company's standing order No. 25.25 to the petitioner dt.16-02-2002 alleging that:-

“For your habitual late attendance or habitual absence from duty without sufficient cause during the year 2001”.

4. The petitioner submitted his explanation to the charge sheet, on 25-2-2002 explaining his knee joint leg injury and requested to provide General Mazdoor duty, as he sustained injury during the course of his employment. But a farce of enquiry was conducted and the petitioner participated in the enquiry proceedings. The Enquiry Officer simply submitted his cryptic findings report in a single paragraph. The respondents failed to provide observation period to the petitioner after the domestic enquiry and dismissed him from service by proc., dt.19-11-2002. The petitioner sustained serious leg injury in the knee joints while he was participating in the sports on behalf of the company. There is reasonable cause for the absence of the petitioner during the year 2001. No show cause notice was issued proposing the capital punishment of dismissal from service, which is against the mandatory/statutory provisions of law and contrary to the principles of natural justice. The extremely harsh punishment of dismissal from service is highly excessive and shockingly disproportionate. Therefore, he prays to set aside the dismissal order and to order for his reinstatement into service with full back wages.

5. The respondent No. 2 filed his counter denying all the allegations in the petition putting the petitioner to strict proof of all those allegations. The 1st and 3rd respondents filed memo adopting the counter filed by R-2.

6. The brief averments of counter of R-2 are that the respondents' company is a Government Company incorporated under the provisions of Company's Act, 1956 for carrying out the business of winning and selling the coal and since the coal mining industry is a central subject, the appropriate Government for this respondent/management is Central Government. As per Sec.7(A)(1) of I.D. Act, the appropriate Government may by notification in the official gazette constitutes one or more Industrial Tribunals for the adjudication of Industrial Disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. And that the Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of Industrial Disputes and the petitioner ought to have approached the said Tribunal for the

redressal of grievances if any. But he conveniently avoided to file his petition before the Tribunal established by the Central Government for the reasons best known to him and the petition is not maintainable under law and the same may be dismissed on this ground alone.

7. The petitioner was appointed as Badli Filler on 3-5-1996. The petitioner is put to strict proof of the allegation that he participated in the sports on behalf of the company in the year 1999 and sustained injury in the knee joints. There is no documentary proof that the petitioner played volley ball on behalf of the respondent company and sustained head injury to his knee joints in the year 1999. The petitioner was not regular to his duties in any year and not put in required minimum (190) musters. During the year 2001 the petitioner put in only 49 musters. As the above act amounts to misconduct, he was issued charge sheet dt.16-2-2002. The petitioner submitted his written explanation dt. 25-2-2002 stating that due to white jaundice he was absent for duties in the year 2001. He did not produce any documentary evidence in support of his ailment. During the enquiry, he accepted that he remained absent on the dates mentioned in the charge sheet and pleaded guilty of the charges. Domestic enquiry was conducted in a fair way the Enquiry Officer submitted his report on the basis of recorded evidence. Subsequent to the enquiry proceedings, the petitioner was advised to attend family counseling vide letter dt. 24-7-2002, but he failed to attend the same. The charges levelled against the petitioner were proved and the respondents company was constrained to dismiss the petitioner from service vide letter dt.19-11-2002. The respondents company cannot go on employing the persons who are chronic absentees, who are a burden to the respondents company. As such, the petitioner was dismissed from service for his unauthorized absenteeism. Therefore, the respondents pray to dismiss the petition with costs.

8. Ex.W-1 to W-10 are marked on behalf of the petitioner and Ex. M-1 to Ex. M-10 are marked on behalf of the respondents.

9. Heard both sides. Perused the material papers on record.

10. Now the point for consideration is:-

- (1) Whether the present petition is maintainable before this Tribunal?
- (2) To what extent the alleged misconduct on the part of the petitioner was made out in the domestic enquiry and whether the punishment of dismissal of the petitioner is justified?”.

11. This court passed order dt.10-7-2013, holding the domestic enquiry conducted by the respondents is valid.

12. POINT NO. 1

It is the case of the respondents that the respondents company incorporated under the provisions of Company's Act, 1956 for carrying out the business and selling the coal and since the coal mining industry is a Central subject, the appropriate Government for this respondents/management is Central Government and that as per Sec.7A(1) of I.D., Act, the appropriate Government by may its notification the official gazette constitute one or more industrial tribunals for adjudication of industrial disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. The respondents further submitted in their counter the Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad on 29-12-2000 for adjudication of Industrial Disputes and the petitioner ought to have approached the said tribunal for redressal of grievances if any. As such, the ID is liable to be dismissed in limini.

13. In a case reported in 1998(5) ALD-16 (D.B) in a writ petition between U.Chinnappa Vrs., Cotton Corporation of India and others; the Division Bench of our High Court held – “we will assume that in so far as the dismissed or retrenched workman is able to approach the Labour Court straight-away, the power of the Central Government to make a reference of the dispute may be whittled down protanto and in that sense there is a conflict or repugnancy with sub-section (2) of section 2(A) and Section 10(1) r/w sub-section (1) of section 2-A and Section 3 of the Act. Even then, the Presidential assent given under Article 254(2) makes the State law prevail over the provisions of the Central law to the extent of repugnancy”. It also further observed Industrial Disputes Act, 1947, Section 2-A(2) is not confined to workmen employed in Industrial undertakings of State Government and it applies also to workmen engaged in Central Government undertakings.

14. In the light of the above cited case law, Section 2-A(2) of I.D Act, 1947 applies both to the workmen employed in State Government undertakings and Central Government undertakings. It is for the workman to approach U/Sec.2-A(2) of I.D. Act, either to the Industrial Tribunals having Central jurisdiction and also the Tribunals having State jurisdiction. Therefore, the point is answered in favour of the petitioner.

15. POINT No.2:-

Now, it is to be seen to what extent the alleged misconduct on the part of the petitioner was made out in the domestic enquiry and whether the punishment of dismissal of the petitioner is justified.

16. This petition is filed seeking relief of reinstatement as Badli Filler. According to the petitioner he joined the

Respondent Company in the year 1996 and had put in more than required 100 musters every year up to the year 2000. He sustained injury while playing sports and because of injury he could not put in sufficient musters during the year 2000-2001. The petitioner has taken treatment from the company Hospital in the year 1999-2000 for his injuries. During the year 2001 the petitioner was forced to do under ground work which is very strenuous and therefore his pain in the knee joint increased. Subsequently charge was framed against the petitioner that he was not regularly attending duties from January, 2001 to December, 2001. The petitioner gave explanation, but it was not considered. Enquiry was conducted, but it was not conducted fairly. The respondent failed to come family counseling and observation period to the petitioner for domestic enquiry and such failure is against the circular and MOs of the Company. Basing on enquiry report the petitioner was illegally dismissed vide Order, dt.19.11.2002. The order was passed without issuing show cause notice. Hence the order may set aside.

17. The counter is filed on behalf of the second respondent stating that the petitioner never played sports on behalf of the respondent company, that petitioner being a under ground worker was expected to work for at least 190 days in a calendar year, that from 1997-2000 the petitioner failed to put in minimum 190 musters as shown in the table below:

1997	181
1998	122
1999	123
2000	101
2001	049

Therefore he was charge sheeted for habitual absence from duty without sufficient cause. The petitioner submitted an explanation with due to jaundice he was absent for that days in the year 2001, but did not produce any documentary evidence in support of his evidence. The petitioner did not mention in his explanation that he reported sick in Company Hospital, during the enquiry the petitioner pleaded guilty for the charges because of the irregular attitude of the petitioner the production of the company was affected and therefore the petition may be dismissed.

18. During the course of enquiry by order dt.10.7.2013 procedure followed in preliminary enquiry was held to be correct. During the course of enquiry Ex.W-1 to W-10 are marked on behalf of the workman and Ex.M-1 to M-10 are marked on behalf of the Management.

19. The main contention of the petitioner is that he was participating in sports and therefore sustained injury and could not attend duties regularly. Ex.W-6 is the certificate

showing that the petitioner participated in Volleyball Tournament. Ex.W-9 is guidelines over relieving employees for participating in sports. Ex.W-10 is reply to the information sought by the petitioner regarding TA claims, relieving letters towards sports relief in departmental/regional tournaments. In this letter it is stated that days of relief are not available. Out of the seven years of service put in by the petitioner, he was attending duty some what regularly up to the year 2000. In the year 2001 only petitioner was on duty for 49 days and this was the reason for his removal. Though the absence of the petitioner without permission to him, have caused inconvenience to the respondent, the mis-conduct is not of last serious nature as to award removal from the service. In a decision reported in 1982 LAB.IC.1031 between R.M., PARMAR VRS. GUJARATH ELECTRICITY BOARD with regard to the condition of removal it was observed by the Gujarat High Court is as follows:

DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT

REPORTED IN 1982 LAB.IC.1031

BETWEEN: R.M., PARMAR VRS. GUJARATH ELECTRICITY BOARD

Guidelines laid down in the matter of inflicting punishment of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.
9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances,

may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

Taking into account the above observation and also the facts that the removal of the petitioner is disproportionate to the mis-conduct, the petition is allowed.

20. In the result, the dismissal order, dt.19.11.2002 marked as Ex.M-10 passed by the respondent No.2 is set aside. The respondent's Company is hereby directed to reinstate the petitioner in the service as "Afresh Badli Filler" subject to Medical fitness for the post. The petitioner is not entitled to any continuity of service and back wages. The award is passed accordingly.

Dictated to the Stenographer (G-III), transcribed by him, corrected and pronounced by me in the open court on this the 9th day of July, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS

For workman:-

Ex.W-1	Dt. 13-04-2007	Demand letter
Ex.W-2	Dt. —	Postal receipt No.1142
Ex.W-3	Dt. 29-04-1996	Appointment order
Ex.W-4	Dt. 27-7-2002	Enquiry report
Ex.W-5	Dt. 19-11-2002	Dismissal order
Ex.W-6	Dt. —	XXVI APS10 valley ball championship participation certificate.
Ex.W-7	Dt. 17/18-12-2013	Letter issued to the petitioner by the respondent regarding information received from the petitioner application dt. 24-10-2013

Ex.W-8	Dt. 17-12-2013	Travelling advance drawn by the petitioner during the period from 1998-1999 to 2000-2001
Ex.W-9	Dt. 13/15-7-2013	Circular issued by the AGM (PER), SRP. Area for guidelines for relieving employees for participating in sports and games.
Ex.W-10	Dt. 26-11-2013	Petitioner's pay sheets for the month of 9/1997, 10/1997, 11/1999 and 12/1999 shows participated sports, the respondent entered his musters as O.Ds.,

For Management :-

Ex.M-1	Dt. 16-02-2002	Charge sheet o/copy.
Ex.M-2	Dt. 20-02-2002	Ack., to charge sheet
Ex.M-3	Dt. 25-02-2002	Reply to the charge sheet
Ex.M-4	Dt. 26-06-2002	Enquiry notice
Ex.M-5	Dt. 03-07-2002	Enquiry proceedings
Ex.M-6	Dt. 24-07-2002	Notice issued to the petitioner to attend counseling duly acknowledged by the petitioner.
Ex.M-7	Dt. 27-07-2002	Enquiry report.
Ex.M-8	Dt. 31-07-2002	Show cause notice
Ex.M-9	Dt. 11-10-2002	Reply to the show cause notice.
Ex.M-10	Dt. 19-11-2002	Dismissal order o/copy.

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2520.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखानी के पंचाट (संदर्भ संख्या 39/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/39/2009) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 12.09.2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE
BEFORE THE CHAIRMAN, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GODAVARIKHANI

Present : SRIG.V. KRISHNAIAH,
Chairman-cum-Presiding Officer

Thursday, on this the 10th Day of July, 2014

INDUSTRIAL DISPUTE No. 39 OF 2009

Between:

Kondanaveni Srinivas,

Ex-Badli Filler, E.C.No.2911401,

S/o. Rajamallu, Aged about 31 years,

R/o. H.No. 20-21, Himmathnagar,

Srirampur, Mancherla

M/o. Adilabad District

...Petitioner

And

1. The Supdt. of Mines,
S.C.Co. Ltd., RK-7 Incline,
PO.Srirampur, District: Adilabad.

2. The General Manager,
S.C.Co. Ltd., Srirampur Area,
PO: Srirampur, District: Adilabad

3. The Chairman & Managing Director,
S.C.Co. Ltd., P.O: Kothagudem,
District : Khammam (A.P) ... Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B.Amarendar Rao, Advocate, for the petitioner and Sri D. Krishnamurthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

1. The petitioner who worked as Coal Filler in the Singareni Collieries Company Limited seeks his reinstatement by setting aside the dismissal order dated 12-02-2004 with continuity of service, all other consequential attendant benefits and full back wages.

2. The allegations in the petition are as follows:-

According to the petitioner, he was appointed as Badli Coal Filler in the year 2002 under dependent employment scheme in place of his deceased brother. Ever since the date of his appointment, the petitioner was discharging his duties to the utmost satisfaction of the company authorities. He belongs to SC community. Ever since the date of appointment of the petitioner, he was discharging his duties to the utmost satisfaction of the company authorities. He was given employment in the absentee vacancies of coal fillers and was shown work as

and when available in place of permanent coal fillers who were temporarily absent. The respondent declared that the petitioner was not entitled to any wages on the days when the petitioner was not shown any employment. The petitioner worked hard and put-up good attendance in the respondent's company. That unfortunately in the said very first year of 2002, he suffered from severe ill-health, fever, joint pains and back ache on account of the strenuous job of Badli Filler. But the 1st respondent without considering the true facts and ill-health condition of the petitioner issued charge sheet dt.17/30-04-2003 under the company's standing order No.25.25 to the petitioner alleging that :

"For your habitual absence from duty without sufficient cause during the year 2002".

3. In the charge sheet, it is alleged that the petitioner absented for his duties habitually during the year 2002 without sanctioned leave or sufficient cause. The petitioner submitted his satisfactory explanation to the charge sheet denying the charge and explaining the true facts of his ill-health, his inability to attend coal filling underground duty and requested to drop the charge in view of his severe ill-health during the course of his employment in the company.

4. The 1st respondent failed to consider the true facts of his case and got conducted a farce of enquiry. The petitioner participated in the enquiry proceedings and deposed his statement explaining the true facts of his ill-health condition praying to provide an opportunity to work in the company. The domestic enquiry was not conducted by the respondents fairly and properly and fair opportunity was not given to the petitioner. The petitioner was imparted medical treatment for his ill-health during the year 2002 in the Areas Hospital of the respondents company and also in the Govt. Community Hospital, Peddapalli. The petitioner put in the required 100 musters in the year 2002. As such, it cannot be termed as misconduct. There is no deliberate or intentional absence on the part of the petitioner.

5. The 2nd respondent without considering the genuine ill-health of the petitioner, dismissed him from service. That the domestic enquiry was not conducted fairly and properly by the respondents and the findings of the enquiry officer are highly perverse, biased and he was dismissed from Service by order dated 12-02-2004, unjustly. Therefore, he prays to allow the petition granting full back wages.

6. R-2 filed counter which was adopted by R-1 and R-3. The main points raised in the counter are regarding the lack of jurisdiction of this Tribunal since the respondents management is a Central Government Company and that there was poor attendance of the petitioner in the year, 2002 (19) musters in the year 2003, (09) musters and in the year 2004, (Nil) musters and that therefore charges were

framed under Sec. 25(25) of standing orders of the company:-

“Habitual late attendance or habitual absence from duty without sufficient cause”.

7. The petitioner received charge sheet and submitted his explanation stating that due to ill-health and due to the death of his brother in law, he has absented himself during the year 2002. The petitioner was issued enquiry notice advising him to attend the enquiry. The petitioner attended the enquiry on 05-05-2007. The petitioner pleaded guilty to the charges leveled against him in the charge sheet. The petitioner did not file any documentary evidence or did not produce any witness in support of his contention that due to ill-health and the death of his brother in law, he absented himself from duty. The petitioner was subjected to family counseling on 3-5-2003 and wherein the petitioner along with his wife attended the session. During the counseling the petitioner assured that he would improve his performance. But the petitioner failed to improve his performance/attendance. The petitioner being a chronic absentee, has never put in required musters from the date of appointment and further failed to improve his attendance even after issuance of charge sheet. The petitioner had not submitted any documents/papers of the treatment taken in the company's area hospital.

8. The respondents company conducted the enquiry fairly following the principles of natural justice and after taking the previous record of the petitioner and his performance during the observation period into consideration, was constrained to dismiss the petitioner from service. Therefore, punishment of dismissal was imposed with effect from 12-02-2004 as per order dated 12-02-2004. That habitual absenteeism adversely impacts the performance of the company, which is engaged in the mining activities and therefore, petition may be dismissed.

9. Heard both sides. The respondents have filed written arguments also. The petitioner contended that the departmental enquiry was not conducted fairly and properly, subsequently memo was filed U/Sec.11-A of I.D., Act conceding the validity of the departmental enquiry. As such, it is not in dispute.

10. The consideration of respective contentions of the parties the following points required to be determined:-

1. “Whether this Tribunal has got jurisdiction?”
2. “Whether the punishment of dismissal of the petitioner is justified and proportionate?”

11. Point No. 1 :

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got

jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

12. Point No. 2

The petitioner worked as Badli Filler in third respondent company, was removed from service on the ground of not attending for duties during the years 2002-2003 and 2003-2004.

13. It is an admitted fact that petitioner worked for 19 musters in the year 2002 and 9 musters in the year 2003 and in nil attendance in the year 2004, after conducting departmental enquiry as the petitioner was removed. The petitioner attended family counseling also along with his wife on 3.5.2003, but he failed to improve his performance. In the year 2009 the petitioner has come up with this ID against all the facts being admitted. The only question is whether the punishment is proportionate and just. On this aspect, I may refer to the decision cited on behalf of the petitioner. The first decision is 2009-IV-LLJ-672 between Chairman-cum- Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhuri and others.

14. It is a case where a systems officer in the Coal India Limited was removed from service for his un-authorised absence for six months. Initially the workman was granted leave up to 29.9.1998 and thereafter he was absent for six months. In the enquiry he admitted to his absence and he stated that the reason is purely personal which cannot be produced by any evidence and the reason is beyond his control also. After referring to the case Law in the subject the Supreme Court of India laid down one test with regard to the proportionately of punishment. The test is whether a reasonable employer would have imposed such punishment in such circumstances. Then the Supreme Court took in to consideration the fairness of the employee admitting the guilt and explained the circumstances the punishment was held to be un-duly harsh.

15. The above decision was a review of the necessity of removing of workman and the circumstances to be taken into consideration which holding that the punishment of removal was not justified.

16. Another decision is reported in 1988, 303 Supreme Court between Scooter India Limited Verses Labour Court, Lucknow. In this case the workman was found guilty of acts of major mis conduct between March, 1981 and July, 1981 and separate enquiries were held in respect of three charge memos. Labour Court had held that the enquiry was properly held that the workman was guilty of the charges, considering the punishment in proper perspective and held that withholding back-wages to the extent of 25% to meet the ends of justice and re-instate the workman.

17. The Labour Court took the view that justice must be tempered with mercy and the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee.

18. Thus the award of the labour court was appraised by the Supreme Court.

Coming to the present case the number of musters put in by the petitioner during the year 2002-2003 and 2003-2004 are as follows:-

2002	19
2003	09
2004	Nil

Petitioner did not attend his duties even after counseling on 3.5.2003. The petitioner was given dependant employee in the place of his deceased brother. The petitioner did not utilized the opportunity and his absence from duties to the extent of management being uncertain as to when he would attend and when he would not attend. In the two cases cited on behalf of the petitioner facts were different. It is no doubt true that removal of workman is not always desirable, but when the workman does not show any inclination to work and when the workman is so negligent towards his duties that he compels to take management harsh decisions. In the present case the absence of the workman as pointed above is such that he was quite reluctant to perform his duties. Therefore it is not a fit case whether the Tribunal can exercise its jurisdiction in favour of workman. When we look at the explanation of the petitioner to the charge sheet he stated that he was not keeping good health and because his brother's-in-law died, he could not attend duties. This explanation was given on 2.5.2003. On 3.5.2003 the family counseling to the petitioner conducted to perform his duties regularly. In enquiry the petitioner admitted that he has not taken treatment from company's hospital and he did not inform about his sickness to the management. Therefore in this case the workman does not deserve any relief. Accordingly petition is to be dismissed.

19. In the result, the petition is dismissed.

Dictated to the Stenographer (G-III), transcribed by him, corrected and pronounced by me in the open court on this the 10th day of July, 2014.

G. V. KRISHNAIAN, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management:-
Nil	Nil-

EXHIBITS

For workman:-

Ex.W-1	Dt. 07-01-2012	Appointment order x.copy
Ex.W-2	Dt. 12-02-2004	Dismissal order, x.copy
Ex.W-3	Dt. 31-07-2008	Demand letter with postal receipt.

For Management:-

Ex.M-1	Dt. 17/30-4-2003	Charge sheet
Ex.M-2	Dt. 02-05-2003	Reply to charge sheet
Ex.M-3	Dt. 02-05-2003	Enquiry notice
Ex.M-4	Dt. 03-05-2003	Family counseling letter submitted by the petitioner and his wife.
Ex.M-5	Dt. 05-05-2003	Enquiry proceedings
Ex.M-6	Dt. 31-05-2003	Enquiry report.
Ex.M-7	Dt. 14-06-2003	Show cause notice
Ex.M-8	Dt. 12-02-2004	Dismissal order.

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इर्नाकुलम के पंचाट (संदर्भ संख्या 24/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22011/11/2010-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 24/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam, as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 12/09/2014.

[No. L-22011/11/2010-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. D. SREEVALLABHAN, B.Sc., LL.B,
Presiding Officer

(Thursday the 31st day of July, 2014/9th Shravana, 1936)

ID 24/2010

- Unions :** 1. Shri T B Abykumar
Unit President, FCI Worker's Union
Chingavanam Unit
C/o Food Corporation of India
Chingavanam Kottayam
2. Shri K P Shaji
Secretary FCI Workers Association (CITU)
Chingavanam Unit
C/o Food Corporation of India
Chingavanam Kottayam

By Advs. Shri Santhosh G Prabhu & Smt. Deepa N U

Management : The Area Manager
Food Corporation of India
District Office
Chingavanam Kottayam

By M/s. Sukumaran & Usha Advocates

This case coming up for final hearing on 29.07.2014 and this Tribunal-cum-Labour Court on 31.07.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide its Order No-L-22011/11/2010-IR(CM-II) dated 15.07.2010 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:
- “(i) Whether the action of the DPS workers of FCI Chingavanam Depot in not working on Sundays is justified?
- (ii) Whether the wages paid to the workers for working on Sundays which is their weekly day of rest is adequate and justified?
- (iii) To what relief are the workmen concerned entitled for?”
3. Unions 1 and 2 after appearance filed separate claim statements with identical allegations. The allegations, in a nutshell, are that from 01.01.1997 onwards the workers of the management are paid their wages and service benefits as per the conditions in Direct Payment System Circular No.IR(L)/8(22)94 dated 14.06.1996. As per the conditions in 16(a) of that Circular each worker will be allowed paid weekly off on Sundays provided the works on all working days of the week preceding the weekly off day. Due to the compulsion of the Senior Regional Manager and District Manager, unions agreed to work on Sundays though a weekly off day on fulfillment of three conditions. The District Manager was informed the conditions by letter

dated 14.10.2003. The third condition was to take a final decision on the rate of wages on the day of weekly off after discussion with the Senior Regional Manager. But instead of fixing the rate of overtime wages as provided in the said DPS circular the rate was reduced to 1.1% of the normal wages. It was reduced without having any discussion with the unions or the workers and about which an industrial dispute is pending before the Hon'ble National Industrial Tribunal, Mumbai as ID No.NTB-1/2005. Due to the reduction of the overtime wages the workmen are working in loss. Since the workers were asked to work with the reduced overtime wages they refused to work on weekly off day after informing the District Manager by letter dated 20.02.2005. The management was informed that the workers are ready to work on weekly off day on payment of overtime wages as provided in the said DPS circular. Afterwards the workers were asked to do impossible works to harass them. The workmen have the eligibility for expecting and enjoying a weekly off day by planning their personal activities. The management has no authority to deny the statutory rights of the workmen. The action of the management is arbitrary, illegal and unjust and is contrary to the provisions of the Industrial Disputes Act and Rules. It also violates the Model Standing Orders provided in Industrial Employment (Standing Orders) Act. It amounts to victimization of the workmen and is an unfair labour practice. The intention of the management is to curtail the benefits and privileges of the workers. Hence an award can be passed holding that the action of the DPS workers of FCI, Chingavanam depot in not working on Sundays is justified and the wages paid to them for working on Sundays is not adequate and justified.

4. Management filed written statement denying the allegations in the claim statements and contending that the Food Corporation of India, a Central Government undertaking established under the Food Corporation Act, 1964, transports food grains from different parts of the country and store it in its godown to make it available for Public Distribution System. It completely depends on Indian Railways for transportation of food grains. The Indian Railways is working without any holiday and are providing service without any break, around the clock, throughout the year. When Railways places rakes in the FCI godown, the Food Corporation of India is bound to load or unload the goods within nine hours of placing irrespective of the time and day. All the workers engaged by the FCI for that purpose throughout the country except those in Kerala perform their duties irrespective of the time and day of placing of rakes. The workers in Kerala caused delay in loading or unloading of goods from the rakes which has resulted in paying heavy demurrage charges by the FCI to the Indian Railways. The FCI has the right to direct the workers to work on any day and they are paid overtime allowances and holidays for working

on Sundays and other holidays. They are adequately compensated for taking overtime duty. In Chingavanam depot of the FCI some of the workers under the leadership of Mr. T B Abeykumar of the FCI Workers Union and Mr. K P Shaji of the Workers Association (CITU) were not attending wagon receipt work properly. There was dislocation of work and the FCI was compelled to pay demurrage charges to Indian Railways. On 01.11.2009, 32 wagons were placed for clearance at the FCI siding at Chingavanam. Even though the workers were directed to clear the wagons within the free time by issuing notice dated 31.10.2009 they were reluctant to attend the unloading work for the reason that 01.11.2009 is Sunday. On 02.11.2009 they cleared only 22 wagons even though they used to clear more than 32 wagons in a day. The unloading work was stopped by 02.30 pm without working for the remaining three working hours. The balance 10 wagons were cleared only at 10.00 am on 03.11.2009. An amount of ₹ 1,37,600 had to be paid as demurrage charges by the FCI to the Railways. Out of the 102 DPS workers only 79 were present on 02.11.2009 and 75 only on 03.11.2009. On 04.11.2009 the Railways again placed 32 wagons. Workers were intimated about it through letter dated 03.11.2009. But 20 wagons were only unloaded by them on 04.11.2009. They left the workplace at 02.30 pm leaving 12 wagons without working for the three remaining working hours. Only 77 workers were present on that day. The balance 12 wagons were cleared on 05.11.2009. An amount of ₹ 67,200 was to be paid as demurrage charges. Even though Indian Railways is booking food grains rakewise with 40 to 43 wagons, the FCI is accommodating only 30 to 32 wagons at Chingavanam since there is no capacity to accommodate one full rake. There was regular unauthorized absence of workers on wagon placement days in the Chingavanam depot causing dislocation of work and monetary loss to the FCI. After the introduction of DPS the workers were attending work on Sundays availing over time allowance @ 1.25 times of hourly rate of earnings upto 18.01.2004. Afterwards when the rate was revised to 1.10 in the year 2004 they refused to work on Sundays. The wagon placement on Sundays or holidays happens occasionally. The FCI cannot request the Indian Railways not to place the wagons on Sundays. There are occasions when wagons may be delayed due to reasons beyond the control of FCI. The FCI has no intention to curtail the benefits and privileges of the workers. The FCI is not denying their statutory rights. The workers are directed to attend the work on Sundays/holidays availing the existing rate of over time allowance. The DPS workers are causing difficulties to the smooth functioning of the FCI. None of the actions of the FCI is contrary to the provisions of the Industrial Disputes Act and Rules. It is necessary to direct the workers to accept the uniform wages for working on Sundays.

5. Unions did not file any rejoinder in spite of the opportunity given for that purpose.

6. From the side of the unions one witness was examined as WW1 and Exts.W1 to W9 were marked. For the management one witness was examined as MW1 and Exts.M1 to M15 were marked.

7. The points for determination are:

(i) Whether refusal of the DPS workers of the FCI, Chingavanam Depot to work on Sundays is justified?

(ii) Whether the wages paid to them for working on Sundays is adequate?

(iii) To what relief, the workmen are entitled to?

8. **Point No. (i) :** Direct Payment System (DPS) was introduced from 01.01.1997 onwards to the workers of the management. Their conditions of service are governed by DPS Circular dated 14.06.1996, copy of which was marked as Ext.M2. As per clause 16(a) of the Circular Sunday is paid weekly off day if the worker was working on all the working days of the week but the management can employ the worker on such day by paying one extra wage in addition to the normal wage. Clause 16(a) is relevant and hence the same is extracted below :—

“Each worker will be allowed paid weekly off on Sundays provided he has worked on all the working days of the week preceding the day of weekly off. In case a Handling Worker will be employed on the day of his weekly off, he will be paid one extra wage at the rate of Minimum Guaranteed daily wage or actual wages for the work done on the basis of ASORs on such weekly off days – whichever is higher – in addition to normal wage equal to Minimum Guaranteed daily wage at the above rates for such weekly off again provided the worker has worked on all the working days of the week preceding the day of weekly off. In case an Ancillary (Casual) worker is employed on the day of his weekly off, he will be paid one extra wage equal to the above Minimum Guaranteed Daily Wage for attending work on such weekly off day in addition to the normal Minimum Guaranteed Daily wage for such weekly off, provided he has also worked on all the working days of the week preceding the day of weekly off”.

9. On a reading of clause 16(a) it is apparently clear that even though Sunday is a weekly off day the handling worker can be employed on the day of his weekly off by paying one extra wage. Nothing is stated about the overtime allowance in that provision.

10. In order to prove that overtime allowance is also to be paid for the workers employed on weekly off days union

has produced Ext.W8. On a perusal of Ext.W8 it can be seen that the payment of overtime allowance is to be regulated as per the Headquarters circular No.IR(L)/4(2)/93 dated 16.06.1994 which provides that the workers engaged for overtime work in the exigencies shall be entitled to overtime payment at 1.25 times of the hourly rate for the extra duty hours put in beyond the normal duty hours upto statutory hours of work and rate for overtime allowance beyond statutory hours of work as prescribed in the respective Shops and Establishments Act of the respective States. It does not expressly provide the payment of overtime wages on weekly off days. But as per Ext.M3, the Circular No.13/1999 dated 27/30.09.1999, issued as clarification of overtime wages to the DPS workers, it is made clear that those workers are entitled to get overtime wage equal to 1.25 times for their work on weekly off days. Clause 5 of the Circular deals with the payment of such overtime wages and the relevant portion reads thus:

“As regards working on weekly off days, the overtime wage will be paid equal to 1.25 times for the hours work done beyond shift hours of the week i.e.39 hours (6 ½ effective hours × 6 days of the week) and upto statutory weekly hours i.e. 48 hours or so as per Shops and Establishment Act. Further, overtime wage for the work done beyond statutory hours i.e. 48 hours or so will be paid at the rate prescribed in the Shops & Establishment Act. This shall be paid in addition to the minimum guaranteed daily wage payable as usual for weekly off day. If a worker is engaged for work on holiday/ weekly off and has already worked for more than 48 hours or the ceiling limit as provided under the Local Shops & Establishment Act of the respective State during the week days, he would be entitled for payment of overtime wage as per the provisions of the Shops and Establishments Act. The hourly rate for the purpose of payment of overtime wage for the work done on weekly off days will be calculated by dividing the actual total earnings for the entire day by the total number of hours put in for work for that day”.

11. The DPS workers were getting the overtime wage in addition to the extra wage for work on weekly off days. But notice was issued under Section 9A of the Industrial Disputes Act by the management for the change of conditions of service including the reduction of overtime wages to 1.1 times of the normal hourly wages and the same is evidenced by Ext. M4. It came into effect on 22.07.2002. But due to the stay owing to the pendency of conciliation before the Regional Labour Commissioner(Central), New Delhi it was implemented only on 19.01.2004 by issuing circular No.02/2004, copy of which is Ext. M5. As per the circular the overtime wage was reduced to 1.1 times of hourly rate of earnings.

12. It is because of the reduction of the wages the DPS workers refused to work on weekly off days. From Exts.W1 to W7 it can be seen that there was continuous demand from the side of the two unions in this case to restore it. Finally they had expressed their refusal to work on weekly off days through letter dated 18.02.2005, copy of which is Ext.W4. They stopped working on weekly off days from 20.02.2005 and due to their refusal to work on such days the FCI had to incur payment of huge amounts as demurrage charges and the same is evidenced by Exts. M7 to M11.

13. Now it is to be considered whether the refusal of the DPS workers to work on weekly off days is justifiable in view of the above said facts and circumstances. DPS workers have to attend duty if they are employed on weekly off days. They are bound to work on such days in view of clause 16(a) of Ext. M2. For the reason that the overtime wage was reduced from 1.25 to 1.10 they have no right to refuse to work on weekly off days. Their remedy is to raise an industrial dispute as per the provisions of the Industrial Disputes Act.

14. By placing reliance on the decision reported in *M/s.North Book Jute Co. Ltd. and Another Vs. Their Workmen* AIR 1960 SC 879 it was argued by the learned counsel for the unions that the refusal to work is justified for the reason of change of conditions of service. Therein it was held that the existence of the remedy under Section 33A of the Industrial Disputes Act does not mean that the workmen are bound to work under the altered conditions of service, even though those are in mere contravention of law. It cannot be made applicable in this case as it was held on a different fact situation. It is not a case relating to public utility service. It was a case where there was introduction of a rationalization scheme by the employer in contravention of Section 33 of the Industrial Disputes Act. The dispute was with regard to the entitlement of wages for the period of absence of the workmen saying that there was an illegal lockout by the employer. Here in this case notice under Section 9A of the Industrial Disputes Act was given on 01.07.2002 informing the implementation of reduction of the wages from 22.07.2002. But due to the pendency of the conciliation proceedings it was implemented only on 19.01.2004 by issuing Ext. M5. At the time of issuance of that circular no proceeding was pending before any of the authorities provided under the Industrial Disputes Act. The National Industrial Tribunal was seized of the matter only in 2005. The DPS workers had to wait for the decision of the National Tribunal as to the dispute as to the reduction of overtime wages. They had not approached the National Tribunal during the pendency of that proceeding for any interim relief. Their refusal to work on weekly off days for the reason of reduction of wages cannot be justified without any lawful reason. They had to seek appropriate remedies instead of stoppage of work on Sundays. Hence

it can be held that the action of the DPS workers in not working on Sundays is not justified.

15. **Point No.(ii) :** There is no dispute as to the extra wage to be paid for working on Sundays. As per clause 16(a) they are entitled to get one extra wage. The dispute is only as to the overtime wage at the time of making this reference. The dispute with regard to the reduction of overtime wages was pending before the National Tribunal while making this reference. Hence this Tribunal was lacking jurisdiction to deal with that matter. But during the pendency of this proceedings award was passed by the National Tribunal on 18.07.2013, copy of which is Ext.W9. The National Tribunal found that the reduction of overtime allowance from 1.25 to 1.1 is unjust and improper and quashed the notice dated 01.07.2002 and the two circulars dated 19.01.2004 altering overtime allowance to 1.1 times of the normal hourly rate of wages and the rates of overtime allowance as prescribed in the circular dated 16.06.1994 of the FCI was restored. Hence the DPS workers are now entitled to get overtime wages as prescribed in the circular dated 16.06.1994 of the FCI. It is 1.25 times of the normal hourly rate of wages as provided in the circular. Hence it can very well be held that the wages paid to the workers for working on Sundays is not adequate and justified.

16. **Point No.(iii) :** In the result an award is passed holding that the action of the DPS workers of the FCI depot in not working on Sundays is not justified and that the wages paid to the workers for working on Sundays is not adequate and justified. They are not entitled to any relief in this ID.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of July, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the workman

WW1 10.07.2012 Shri K. P. Shaji

Witness for the management

MW1 09.08.2012 Shri P. N. Soman

Exhibits for the workman

W1 - Copy of letter dated 02.12.2009 addressed to the Assistant Labour Commissioner(Central), Trivandrum by Shri K. P. Shaji, Secretary, FCI Worker's Association, Chingavanom Unit

W2 - Copy of letter dated 02.12.2009 addressed to the Assistant Labour Commissioner(Central), Trivandrum by Shri T. B. Abykumar, Unit President, FCI Workers Union, Chingavanam

W3 - Copy of letter dated 14.10.2003 addressed to the District Manager, Food Corporation of India, Chingavanom by Shri P. K. Sasi, Organising Secretary, FCI Workers Union, Chingavanam

W4 - Copy of letter dated 18.02.2005 addressed to the District Manager, Food Corporation of India, Chingavanom by Shri P. K. Sasi, Organising Secretary, FCI Workers Union, Chingavanam

W5 - Copy of letter dated 05.11.2005 addressed to the District Manager, Food Corporation of India, Chingavanom by Shri P. K. Sasi, Organising Secretary, FCI Workers Union, Chingavanam

W6 - Copy of letter dated 11.11.2005 addressed to the District Manager, Food Corporation of India, Chingavanom by Shri P. K. Sasi, Organising Secretary, FCI Workers Union, Chingavanam

W7 - Copy of letter dated 14.05.2007 addressed to the Area Manager, Food Corporation of India, Chingavanom by Shri P. V. Ponnappan, Central Committee Member, FCI Workers Union, Chingavanam

W8 - Copy of letter No.IR-L/1(1)/97 dated 24.02.2007 addressed to the District Manager, Food Corporation of India by the Senior Regional Manager

W9 - Copy of the Award dated 07.09.2012 in Reference No.NTB-1/2005 of the National Industrial Tribunal, Mumbai

Exhibits for the management

M1 - Copy of instructions as to Rates Circular No.84 of 2006 dated 10.10.2006 issued by the Director Traffic Commercial(Rates), Railway Board

M2	-	Copy of letter No.IR(L)/8(22)/94 dated 14.06.1996 addressed to the Zonal Managers and the Senior Regional Managers by the Executive Director(Genl.)
M3	-	Copy of Circular No.13/1999 dated 27/30.09.1999 issued by the Manager(IR-L)
M4	-	Copy of notice dated 01.07.2002 as to change of service conditions proposed by the employer
M5	-	Copy of Circular No.02/2004 dated 19.01.2004 issued by the Manager(IR-Labour), FCI, Headquarter, New Delhi
M6	-	Copy of letter No.ND-8/19/2002-PA dated 11.11.2003 addressed to the Secretary, Govt. of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi by the Regional Labour Commissioner(C), New Delhi
M7	-	Copy of Notice No.DPS-D/IRL/32(4)2008 dated 31.10.2009 issued by the Manager(DPS), FCI, Kottayam District to the unions
M8	-	D/C Bill No.GOV/FCI/DC/09/09-10 dated 03.11.2009
M9	-	Copy of letter No.V/C/200/DC/FCI/CGV/11/09-10 dated 11.02.2010 addressed to the Area Manager, Food Corporation of India, District Office, Kottayam by the Senior Divisional Commercial Manager, Southern Railway, Divisional Office, Commercial Branch, Thiruvananthapuram
M10	-	Copy of Show Cause Notice No.IR-L/32(3)/03/09 dated 10.11.2009 issued by the Area Manager, Food Corporation of India, Kottayam District
M11	-	Copy of letter dated 14.11.2009 addressed to the Area Manager, FCI, Chingavanam by Shri K. K. Rajappan
M12	-	Copy of letter No.IR(L)/4(33)/2003 dated 28.6.2004/ 15.07.2004 addressed to the Zonal

		Manager(East)(South), FCI, Kolkata/Chennai by the Joint Manager(IR-Labour), FCI, Headquarters, New Delhi
M13	-	Copy of letter No.IR(L)/14(31)/1998/Vol.III dated 03.04.2007 addressed to the General Manager(Region), FCI, Regional Office, Chennai by the Assistant General Manager(IR-L), FCI, Headquarters, New Delhi
M14	-	Copy of Circular No.IR(L)/4(2)/93 dated 16.06.1994 issued by the Manager(IR-L), FCI, Headquarters, New Delhi
M15	-	Copy of Memorandum Of Understanding dated 13.06.1994 arrived at between the management and the FCI Workers Union

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2522.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.जी.एन. ओ.यू. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 67/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-42012/52/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 67/06) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Indira Gandhi National Open University, and their workmen, received by the Central Government on 12/09/2014.

[No. L-42012/52/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/67/06

Presiding Officer : SHRI R. B. PATLE

General Secretary,
SC/ST/OBC Karmchari Kalyan Parishad,
9, Sanwer Road, Ujjain.Workman/Union

Versus

Regional Director,
Indira Gandhi National Open University,
IIIrd Floor, Sanchi Complex,
Shivaji Nagar, BhopalManagement

AWARD

Passed on this 1st day of August 2014

1. As per letter dated 6-10-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/52/2005-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Indira Gandhi National Open University in terminating the services of Shri Vinod Kumar Chadar w.e.f. 28-2-03 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim Page 3/1 to 3/4. Case of workman is that he was engaged by IInd party as permanent peon on 16-4-98. He was paid Rs. 2300 per month. He further submits that his wages were increased from Rs. 96 to 104, 112, 116, 151 per day. He was paid wages for Monday to Saturday. He was not paid for Sunday and national holidays. His services were terminated on 28-2-2000 without notice. He was not paid retrenchment compensation. Workman also claims that he was selected after interview on 17-7-01. He acquired status of employee under Section 25 B of I.D.Act as he completed more than 240 days continuous service. His services are terminated in violation of Section 25-F of I.D.Act. On such ground, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 8/1 to 8/2. Claim of workman is denied. IInd party submits that it is not covered as an industry, it is an educational institution. Provisions of I.D.Act are not applicable to it. The reference is not tenable and deserves to be rejected. IInd party further submits that workman was engaged on temporary basis for period of 60 days. After expiry of the said period, his services were automatically terminated. It was not necessary to give notice. Workman is not covered as employee under Section 25 B of I.D.Act. He has not completed 240 days continuous service. IInd party prays for rejection of claim.

4. Rejoinder is filed by workman at page 11/1 to 11/3 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the establishment of IInd party is covered as an Industry under Section 2(j) of I.D.Act? | In Affirmative |
| (ii) Whether the action of the management of Indira Gandhi National Open University in terminating the services of Shri Vinod Kumar Chadar w.e.f. 28-2-03 is legal and justified? | In Negative |
| (iii) If not, what relief the workman is entitled to?” | As per final order. |

REASONS

6. IInd party raised objection that its institution is not covered under I.D.Act being educational institution. The affidavit of evidence filed by management's witness Shri K.S.Tiwari is silent what kind of sovereign functions IInd party is discharging. The ratio held in Bangalore Water Supply case settled the legal position that educational institution are not excluded from Section 2(j) of I.D.Act. only sovereign functions of state are excluded. In absence of specific evidence about the activities undertaken by establishment of IInd party and absence of evidence is discharging functions of State, I hold that the establishment of IInd party is covered as an industry under 2(j) of I.D.Act.

7. Point No.2,3- workman is challenging termination of his service for violation of Section 25-F of I.D.Act. In his affidavit, he stated that he was working as Ware House Attendant from 17-4-98 on monthly pay Rs. 2300/-. His services are terminated without notice from 28-2-03. He was not paid retrenchment compensation. Though workman has stated about bonus was not paid to him by IInd party, the terms of reference doesnot include the claim for bonus. In his cross-examination, workman says he has produced zerox copies of the document. The documents were supplied by Dr. Kaushik. Originals are not with him. He has not received appointment letters. The cross-examination of workman is absolutely silent. There is no denial of continuous working of workman for more than 240ays. The evidence of workman on above point remained unchallenged.

8. Management's witness Shri K.S.Tiwari filed affidavit of his evidence. He remained absent for his cross-examination. Therefore evidence of management's witness cannot be considered. IInd party did not dispute workman was working on its establishment. IInd party has contented that workman was not appointed as regular employee and employer employee relationship doesnot

exist. The engagement of labour on daily wages is not excluded from Section 2(s) of I.D.Act. the document Exhibit W-5 to W-15 admitted by IInd party corroborated evidence of workman that he completed more than 240 days continuous service. His services were terminated without notice. No retrenchment compensation was paid to him. Therefore termination of service of workman is in violation of Section 25-F of I.D.Act. for above reasons, I record my finding in Point No.1 in Negative.

9. In view of my finding in Point No.1, question arises whether workman is entitled for reinstatement with back wages. Considering short period of working and workman was not appointed following recruitment rules, reinstatement of workman cannot be allowed. Considering tenure from 16-4-98 to 28-2-03 for about 4 year 10 months, compensation Rs. 75,000/- would be reasonable. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Indira Gandhi National Open University in terminating the services of Shri Vinod Kumar Chadar w.e.f. 28-2-03 is not proper.
- (2) IInd party is directed to pay compensation Rs. 75,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2523.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 28/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/74/2009-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 28/2010 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Jhingurda Project of NCL, Jhingurda Project of NCL, and their workmen, received by the Central Government on 12/09/2014

[No. L-22012/74/2009-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2010

PRESIDING OFFICER : SHRI R.B.PATLE

The President/Secretary,
RCWF(NLO),
SHF-135, Singrauli Colliery,
Distt. Singrauli, MP.

.....Workman/Union

Versus

Chief General Manager,
Jhingurda Project of NCL,
PO Amlohri, Distt. Singrauli,
MP.

....Management

AWARD

Passed on this 20th day of August, 2014

1. As per letter dated 3-3-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/74/2009-IR(CM-II). The dispute under reference relates to:

“Whether the demands of Rashtriya Colliery Workers Federation for (i) placing Shri Tejbali Singh, Sr. Surveyor in SLU Grade A in accordance with II-32 and (ii) promoting Shri Tejbali Singh to the post of Mining Surveyor Grade A (T&S) w.e.f. 28-3-02 i.e. the effective date of the Certificate of Mining Surveyor are legal and justified? To what relief is the claimant workman entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted his statement of claim. Case of Ist party workman is that he had passed ITI in 1975 and completed 2 years surveyor's course. He joined as apprentice for 1 year after completion of apprentice, he was appointed in NCL in 1977 on 3-12-1977. On 11-10-88, he was promoted as Surveyor Civil Grade B on the pretext that there was no cadre scheme, promotional avenues of workman were denied. As per rules by JBCCI on completion of 8 years service in same grade, workman was extended such benefit on 1-11-97 in Grade A Pay Scale. Workman further submits that as per JBCCI Circular dated 22-1-02 employees passed ITI working in same grade for 3 years were given placement in the next grade from 1-1-2000. More than 100 employees from Jhingurda Project passed ITI were extended its benefit. The workman was denied said benefit.

3. It is further submitted that joint representation was submitted on 19-9-02 to management of Jhingurda Mine

and fax message to NCL Head office was sent on 30-12-02. It was claimed by them that the appointment of the employees passed ITI, their service details were called. Said information was submitted by Jhingurda Project on 2-1-03 to NCL Head Office. On 24-1-03, ITI certificates were called from them. On 3-2-03, other employees who had submitted representations with him R.B. Singh draftsman was upgraded, the workman was not given said benefit. That in Jayant and Amlohri Project on 6-2-04, 18-5-04, the Surveyors were given benefit of II.32. workman had again submitted representations dated 24-7-04, 16-8-04 but he was not given benefit of SLU. From Amlohri Project, Ramagya Pandey, Surveyor Grade C was given SLU benefit to Grade-A. workman was given benefit of SLU to Grade B. workman was denied Grade A and pay Scale A-1.

4. Workman further submits that on 19-7-04, a proposal was prepared and got approved by the competent officer for according benefit of I.I.32. the names of employees including Ramagya Pandey, R.B. Singh were included in it. To be precise workman submits that he received certificate of competency Mine Surveyor from Director General of Security. He was eligible for the post of Surveyor Grade A. workman despite of repeated reminders was denied said benefit to the post of Surveyor Grade A. workman was given Grade B w.e.f. 28-3-02. Workman was drawing Grade A pay scale from 1-1-97. Therefore workman joined said post under protest. Workman had given letters dated 21-5-04, 18-6-04 to the Union and letter dated 30-5-05 claiming post of Mine Surveyor Grade A from the date of passing competent examination. Workman was not given said benefit. He further submits that other 14 mine surveyors passing competency examination were given Grade A post while they were working in Group C namely R.S. Verma and others. Workman was denied the post. There was practice in establishment of IInd party to accord Grade A to the employees passing competency examination of Mining Surveyor. Workman submits that cadre scheme dated 18-12-97 is not approved by JBCCI. He is competent to frame cadre scheme. That it only relates to career growth and internal staffing pattern. Workman had passed BGMS, competency mine surveyor examination, ITI, apprentice for 1 year, has 27 years experience in the mine is discriminated and denied post of Mine Surveyor Grade A. workman prays for benefits of I.I.No.32 and promotion to the post of Mine Surveyor Grade A w.e.f. 28-3-02.

5. IInd party filed Written Statement denying claim of Ist party and workman for promotion to the post of mine surveyor Grade A. that SLU benefit as per I.I.32 is already given to the workman. Said claim doesnot survive. That terms and conditions of employees working in coal industry are governed by NCWA. Cadre Scheme has been formulated for each category of workman regarding qualification, experience etc. That promotion

is given as per provisions of cadre scheme. There is committee formed known as JBCCI. It consist of equal strength of representations of recognized Union, Central Trade Union and management. JBCCI subsequently issued revised pattern/ permanent avenues for mine survey persons by circular dated 18-12-97. It is submitted that workman was initially appointed as Grade I from 3-12-77. He was promoted next to the post of Surveyor since Grade C on 29-1-82. Further promotion as Sr. Surveyor Grade B was from 11-10-88. Workman was given SLU benefit after completing 8 years service in Grade B. As per I.I.32 dated 22-1-02, workman was given benefit vide order dated 10-12/7/2010. That workman passed competency examination of Surveyor under Coal Mines Regulation 1957 in July 2001 vide certificate issued on 24-7-02. Workman submitted certificate with application dated 5-8-02. Thereafter management issued order dated 22-4-04 and as per recommendations of DPC, workman was placed in Grade B pay scale 431-7257. Said fixation was made as per revised order dated 18-12-97. The entry point of category B-1 has been proposed as T&S Grade B. workman was correctly placed in Grade B. workman is not entitled to Grade A. Above contentions are reiterated by management. All adverse contentions in statement of claim of workman are denied. It is submitted that workman is rightly placed in Grade B as per staffing pattern at relevant time. IInd party prays for rejection of claim.

6. Workman filed rejoinder reiterating his contentions in statement of claim. He submits that cadre scheme is violated in his matter. Comparison with other employees is necessary. That Shri Ansari was given Grade A post and workman has been discriminated.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the demands of Rashriya Colliery Workers Federation for placing Shri Tejbali Singh, Sr. Surveyor in SLU Grade A in accordance with II-32 and (ii) promoting Shri Tejbali Singh to the post of Mining Surveyor Grade A (T&S) w.e.f. 28-3-02 i.e. the effective date of the Certificate of Mining Surveyor are legal and justified? | In Affirmative |
| (ii) If so, to what relief the workman is entitled to?" | As per final order. |

REASONS

8. The dispute relates to SLU benefit in accordance with I.I.32 to the workman. Said benefit is already extended.

Therefore Ist part of the reference in the dispute seems to exist. IInd party of terms of reference relates to promotion of workman Tejbali to the post of Mining Surveyor Grade A (T&S) w.e.f. 28-3-02. The parties are in serious dispute about said demand. Workman is not represented by legal practitioner. He has produced numerous documents but no care is taken to prove any of those documents. The affidavit of evidence of workman is also not happily worded. The affidavit of evidence of workman is on the point that contentions raised in statement of claim and rejoinder are correct. Workman was cross-examined. In his cross-examination workman says post of surveyor Grade B was claimed by him from 28-3-02 as per I.I.32. he is given said benefit. He admits cadre scheme shown to him marked Exhibit M-1 and circular dated 18-12-97 marked as Exhibit M-2. His appointment was as draftsman trainee in 1977. On 3-12-78, he was appointed in cat-II. On 3-10-79, he was appointed as Assistant Surveyor. On 29-1-82, he was promoted as Surveyor Civil Grade C. on 11-10-88, he was promoted to the post of Sr. Surveyor Grade B. he admits that after completion of 8 years service, he was given SLU benefit. He passed surveyor competency examination on 28-3-02. The certificate was issued on 5-8-02. He denies that his pay was correctly fixed.

9. Management's witness Sandeep Kumar Shah supported contentions of management that workman was initially appointed as Trainee Category I. he was placed to the post of Trainee Category II on 3-12-78. He was appointed as Asstt. Suveyor on 3-12-1979, promoted as Surveyor Civil from 29-1-82, promoted as Sr. Surveyor Grade B on 11-10-88 after completion of 8 year service. SLU benefit was given in Grade B. that on 22-4-04 on recommendation of DPC, workman was placed in Grade B from 28-3-02. Management's witness in his cross-examination denies that cadre scheme was implemented in 1980. Staffing pattern was implemented in 1997. Workman is given benefit of I.I.32 from 3-1-01. After giving benefit of I.I.32, workman was given monetary benefit of post of Grade A but designation was not given of the post of Grade A. management's witness admitted office order dated 12-7-88 Exhibit W-3, order dated 12-2-93. Exhibit W-4 – cadre scheme. In order Exhibit W-3, W-4, there is no reference that workman was given Grade A. management's witness denies that the employees holding ITI, passing DGMS examination are directly given Grade A. management's witness admits that in 2002, after giving promotion to Surveyor Grade B, financial benefits of Surveyor Grade A was given to workman.

10. Exhibit W-1 is copy of certificate of passing ITI. W-2 is certificate of National Apprenticeship for the period 8-3-76 to 7-3-77. Copies of representations and appointment/ promotions of other employees are produced. Copy of fax message dated 27-1-03 is produced. Office order dated 3-2-03 shows that as per I.I.32, Shri Raj

Bahadur Singh, Sr. D/Man (Mech) Jhingurda Project who completed 3 years in the existing grade as on 31-12-2000 is hereby notionally placed in the next higher grade i.e. Grade A. Office order dated 6-2-04 shows list of Surveyors (T&S) were brought to higher grade of pay Scale Grade A. name of Ist party workman is not included in it. Name of Shri Ganesh Patel is appearing in the list. The controversy between parties relates to the cadre scheme. The copies of office note with recommendations of Grade A to the workman are produced on record. Exhibit M-1 cadre scheme is dated 22-6-80. The promotion to the post of overman/head overman Grade A, pay scale is shown 722-1278. The eligibility of employees is shown must have worked as overman for 5 years- promotion from DPC or Seniority cum merit basis subject to availability of vacancy. Clause 3 of Exhibit M-1 provides the promotional channel for various categories of Survey Personnel shall be as per Annexure A-5 hereto. The said annexure only indicates the qualifications and experience to be possessed by the departmental candidates including in the cadre form time to time for the purpose of eligibility for consideration for selection in connection with next higher post. Clause 5 provides direct recruitment to the post of Surveyor and Dy. Surveyor shall be resorted to only if there is no likelihood of departmental candidates to fill all the vacant posts within a period of six months. The chart Annexure A shows post of Surveyor Technical Grade A, Pay Scale 722-1278- qualification is matriculate with survey certificate of competency granted by DGMS with 3 years experience as Dy.Surveyor- promotion through DPC. Workman has passed DGMS and certificate was submitted on 28-3-02. Exhibit M-2 relates to revised cadre scheme for Surveyors. The Cadre Scheme Annexure I identifies surveyors depending on qualification/ training in categories. Category A – degree in mining or equivalent proposed to be recruited as JNT (Survey), Category A-I degree in mining or equivalent with surveyor's certificate of competency. Category B-I matriculation with surveyors certificate of competency. Category B2 Diploma in mine surveying with surveyors certificate of competency. Category B-3 matriculation and successful completion of company's training course for surveyors of not less than two years with Surveyors certificate of competency. Exhibit M-2 doesnot supersede cadre scheme M-1 introduced on 22-6-80. Cadre scheme Exhibit M-2 was introduced on 18-2-97 describing higher qualification of degree, diploma etc. for different categories. Management's witness in his cross-examination has admitted that in Exhibit W-3. W-4, there is no reference of giving financial benefits of Grade A to the workman. Management's witness says that workman was given monetary benefits of Grade A without changing designation. There appears confusion with the officers of management about cadre scheme Exhibit M-1 and cadre scheme Exhibit M-2. The contentions of workman about Mr. Ansari and Patel are denied. The

management in its Written Statement and evidence of its witness claims that there cannot be comparison with those employees as their case was different in their matter. However management has not explained what were different aspects. That Mr. Ansari and Patel were given Grade A and workman was denied said benefit. In absence of such evidence or explanation, the evidence of workman that he has been discriminated and denied benefit of Grade A pay scale cannot be rejected. For above reasons, I record my finding on Point No.1 partly in Affirmative relating to denial of Grade A pay scale to the workman.

11. In the result, award is passed as under:-

- (1) The action of the management denying post of Mining Surveyor Grade A (T&S) w.e.f. 28-3-02 to the workman is not proper and legal. Benefit of I.I.32 is already given to the workman.
- (2) IInd party is directed to give benefit of Grade A pay scale to the workman from 28-3-02.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2524.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 90/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/361/1992-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/361/1992-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/90/93

PRESIDING OFFICER : SHRI R.B. PATLE

Shri Malkrit Singh,
M.Q. No. A/5,
PO Jamuna Colliery,
Distt. Shahdol.

...Workman

Versus

General Manager,
Jamuna & Kotma Area of SECL,
PO Jamuna Colliery,
Distt. Shahdol

...Management

AWARD

Passed on this 12th day of August 2014

1. As per letter dated 3-3-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/361/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the Sub Area Manager, Jamuna Sub Area, Jamuna & Kotma Area of SECL in dismissing Shri Malkrit Singh Acting Driver w.e.f. 11-1-80 vis a vis acquittal of Shri Malkrit Singh by Judicial Court is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 4/1 to 4/2. Case of workman is that she was employed as Driver in Jamuna Kotma Open Cast Mines on 6-11-79. His truck was met with an accident. 6 persons were killed in the accident. After chargesheet, enquiry was conducted against him. He was dismissed on 11-1-1980. On same charge, criminal case for offence under Section 304 IPC vide Case No. 207/80 was prosecuted against him before JMFC Katghora, Distt. Bilaspur. He submits that he was acquitted in said case on 12-2-88. After his acquittal in said case, workman submitted representation requesting for reinstatement. That there was no parallel finding regarding the offence. The finding of criminal court has to prevail over the domestic enquiry. That he was denied reinstatement by management. Conciliation proceeding was initiated. On such ground, workman prays for his reinstatement.

3. Management filed Written Statement at Page 5/1 to 5/3. IInd party submits that it is registered under Company's Act. The company is having many colliery in MP. Workman was working as Category I mazdoor in Jamuna Open Cast Mines. He was officiating as truck driver. Chargesheet was issued to workman about serious misconduct. Workman filed reply to the chargesheet. It was found not satisfactory. Enquiry was conducted against workman. Workman fully participated in the enquiry proceedings. He was given opportunity for his defence. Principles of natural justice were followed. After approval of competent authority, workman was dismissed from service. That legality of enquiry be decided first before deciding the matter on merit. If enquiry is found vitiated, management be allowed to prove misconduct. That workman is not entitled to relief claimed by him. It is denied

that judgment in Criminal Case by JMFC prevails in findings in Enquiry Proceedings. IInd party prayed for rejection of his claim.

4. Workman filed rejoinder at Page 6/1 reiterating his contentions in statement of claim. As per ordersheet dated 19-2-96 as a record of Enquiry Proceedings was not produced, enquiry was found vitiated. Management was permitted to adduce evidence to prove misconduct.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the misconduct alleged against workman is proved by IInd party? | The incident occurred due to negligence of workman. He allowed to travel passengers unauthorisely in truck given by him. |
| (ii) Whether the action of the Sub Area Manager, Jamuna Sub Area, Jamuna & Kotma Area of SECL in dismissing Shri Malkrit Singh Acting Driver w.e.f. 11-1-80 vis a vis acquittal of Shri Malkrit Singh by Judicial Court is legal and justified? | In Affirmative |
| (iii) If not, what relief the workman is entitled to?" | Workman is not entitled to relief claimed by him. |

REASONS

6. As discussed above, enquiry conducted against workman is found vitiated. Management has been permitted to prove by adducing evidence. Management filed affidavit of Shri Manaki Foreman stating that workman was driving Truck No.MHG-5764 in the morning of 6th November 1979 met with accident before approaching Village Madhai. Workman was prosecuted in said accident. That six persons died on spot in the accident. In his cross-examination, witness of management says he doesnot hold degree or diploma in automobile. He had taken inspection of Truck on the spot. Workman was prosecuted for the accident. He had submitted written report. Witness No. 2 R.L. Ramawat also given similar evidence that the workman was driving truck in morning of 6-11-1979. The truck met with an accident. Truck was driven negligently by workman. In his cross-examination, witness of management says he was Security Inspector. He is matriculate. He was not considered with maintenance of colliery vehicles. He has no technical knowledge about truck. Manimk Sharma management's witness also in his affidavit of evidence has stated that incident occurred on 6-11-79. He visited

spot of accident with Executive Engineer on 8-11-79. He had taken inspection. The machines loaded over the truck had come out breaking the stand. Witness of management was not cross-examined. Management's witness Vashista Dubey in his affidavit of evidence says about accident occurred on 6-11-79. He had talk with the passenger travelling in the truck. The Driver had allowed 35 passengers. The Truck was driven in excessive speed. In his cross-examination, witness says he had handed over the affidavit of his evidence to the Officer of the management. Affidavit was written by the officer. His statement was not recorded in criminal court. Earlier the vehicle was in speed. Speed was reduced at turning.

7. Learned counsel for workman Shri R.C. Shrivstava submits that the evidence of the management's witnesses is not sufficient to prove charges against workman. Ist party workman was acquitted by Criminal Court. The misconduct alleged against workman is not proved. Copies of judgments in MACT cases 34, 35, 39 of 1986 are produced. Workman was Respondent No. 2 in all those proceedings. Point No.1 in those judgments shows that workman had allowed 27 passengers in his truck. Point No.1(B) is answered that deceased was not responsible for accident. All the claims were partly allowed. The awards were challenged by filing miscellaneous appeal No. 675/97 before Hon'ble High Court by Gehna Bai, Santram. The compensation was enhanced to Rs. 87,500. The evidence of management's witness is corroborated by judgments in MACT cases discussed above. Workman himself admits occurrence of accident and death of 6 persons. However after his acquittal, he is pressing for reinstatement on the ground that finding of Criminal Court prevails over the finding in Enquiry Proceedings. On the point, learned counsel for IInd party Mr. A.K. Shashi relies on ratio held in case of

"Management of Thiruvalluvar Transport Corporation and Shri S. Anthonysamy and another reported in 2005-II-LLJ-236. Their Lordship of Madras High Court dealing with the question held that Labour Court interfere with dismissal of workman on ground of acquittal in criminal case was on wrong legal basis. Standard of proof in criminal proceeding is different from that in departmental proceeding."

Merely on the ground of acquittal by criminal court, workman cannot claim reinstatement. Misconduct is proved. As such I record my finding in Point No.1, 2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the Sub Area Manager, Jamuna Sub Area, Jamuna & Kotma Area of SECL in dismissing Shri Malkrit Singh, w.e.f. 11-1-80 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2525.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 125/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/70/1992-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/70/1992-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/125/92

PRESIDING OFFICER : SHRI R. B. PATLE

The Organising Secretary,
R.K.K.M.S. (INYUC),
PO Chandametta,
Distt. Chhindwara (MP)

...Workman/Union

Versus

Manager,
Nandan Mine No.1,
Western Coalfields Ltd.,
PO Nandan,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 20th day of August, 2014

1. As per letter dated 9-6-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/70/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the General Manager, WC Ltd., Kanhan Area PO Dungaria, Distt. Chhindwara and the Manager, Nandan Colliery No.1 of WCL, PO Nandan Distt. Chhindwara MP is justified in

terminating from the services of Shri Ramesh S/o Santoo, D.P.R. and 9 others, workmen of Nandan Coal Mine No.1, WCL, PO Nandan Distt. Chhindwara (MP) w.e.f. the date shown against the name of each workman in the attached list as Annexure-I? if not, to what relief the concerned workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Union filed statement of claim at Page 5/1 to 5/9. Case of Ist party workman is that 10 employees names shown in Para-1 of statement of claim were terminated from service of IInd party from different dates shown against their respective names. That Union is registered under Trade Union Act. Those employees Shri Ramesh, Mangal singh, Dhanaram Baradi, Azamali Khan, Sumersingh, Goroo, Joharlal, Kishanlal & Batoo were working on DPR, General Masdoor, Trammer, Dresser in Nandan Mine No.1 of WCL. They were permanent employees discharging their duties to the satisfaction of their superiors. That those employees were not provided quarters. Their families were residing at their native places. Employees jointly used to visit their native places once or twice in a month. However due to domestic problems of individual employees, they were visiting their respective villages taking casual leave informing the management. That those employees went on leave and could not attend their duties within 10 days as mentioned in standing orders. However management was informed. That charge sheet was issued to them for habitual unauthorised absence. Those employees being illiterate and belong to backward community did not give reply to the charge sheet. Enquiry Officer was appointed to Shri B. Prasad Sr. Personal Manager. Shri S.K. Karketta Regional Officer was representative of the management. After their transfer, Shri P.S. Deshpande and Shri S.Bhargava were appointed as Enquiry Officer and Presenting Officer. That enquiry was started against those employees, notices were issued to them on wrong address. Notices were not issued to any of those employees. Enquiry was conducted ex parte without giving opportunity of hearing in those points. The Union alleged that enquiry is illegal. Enquiry Officer was pre-determined and biased. Enquiry Officer acted as a prosecutor. Any documents about absence from duty was not proved by management's witnesses. Enquiries were motivated for termination of their services. Notice was published in Navbharat on 16-10-99. Those employees being illiterate & said news paper has no circulation at Parasia, they had no knowledge of the public notice. Employees were not given reasonable opportunity for defence. Enquiry Officer twisted statements made in enquiry proceedings. Co-workers were not permitted.

3. It is further submitted that standing orders provided if employee is absent for more than 10 days, his name should be taken in badly test. Findings were submitted to

the colliery Manager. The findings of Enquiry Officer are perverse. The punishment imposed is illegal. Punishment is harsh. Families of employees are justified, facing financial crisis due to unemployment. On such ground, Union prays for reinstatement with back wages for those 10 employees.

4. Management filed Written Statement at Page 6/1 to 6/4. Identical Written statement are filed separately for other employees at Page 7/1 to 7/4, 8/1 to 8/2, 9/1 to 9/4. Identical Written statement are filed in respect of the respective employees. It is submitted that termination of each employee is on basis of individual facts. Nothing is common in the termination of respective employees. Combined reference is not legal. The reference is bad. Non-employment of casual employees cannot made termination of services. Out of 10, 4 employees were totally employed on casual basis as and when required. Their employment starts on starting of the day and ends on end of day. Their discontinuation cannot be said termination. That Ramesh was employed as DPR. He was remaining absent without leave. He had no intention to continue work. Repeated efforts were made to persuade him for his job. All warnings not resulted in action. Charge sheet was issued to employees. Enquiry was conducted. Employee did not participate in enquiry despite of notice.

5. That Azamali was employed as Dresser/ driver. He was in habit of permanent absent without permission. Repeated efforts to pursue him had no affect. Charge sheet was issued to him on 4-8-85, enquiry was conducted. Workman did not participate despite of notice. Identical contentions are raised in Written Statement filed in matter of Sumersingh, Dhanaram, Goroo, Joharlal, Kishanlal & Batoo. IInd party prayed for rejection of claim. In the matter of Guroo, Written Statement is filed at Pages 12/1 to 12/7. His date of termination is shown 18-12-88. Charge sheet was issued to him. Workman did not appear. It was disclosed that workman had died. His LRs failed to appear in Enquiry Proceedings. Statements of witnesses of management were recorded. Enquiry was conducted as per rules.

6. Legality of enquiry was in dispute. As per order dated 7-11-2013, enquiry conducted against workman is found legal and proper. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|----------------|
| (i) "Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?" | In Affirmative |
| (ii) Whether the punishment of termination/dismissal imposed against workman is proper and legal? | In Affirmative |

- (iii) If so, to what relief the workman is entitled to?"

Workmen are not entitled to any relief.

REASONS

7. As discussed above, enquiry conducted against workman is found proper and legal as per order dated 7-11-2014. Workman did not adduce evidence about other issues. As enquiry is found proper and legal, only evidence in Enquiry Proceedings is required to be considered for recording finding whether misconduct alleged against workman is proved or not. From evidence of management's witnesses, record of Enquiry proceedings is produced as Exhibit M-7 to M-16. The perusal of record of Enquiry proceedings shows that separate enquiry was conducted against all those employees. Statements of witnesses of management were recorded before Enquiry Officer. The bill clerk, time keeper have stated about workmen were absent without permission. Certificate about attendance of respective employees were produced. Any of the Ist party workman did not participate in Enquiry Proceedings. Evidence of management's witnesses remained unchallenged. The Ist party workmen even did not participate in reference proceeding. They failed to adduce evidence in support of their contentions in statement of claim. For absence of evidence, enquiry conducted against workman was found proper and legal. The unauthorized absence of all workmen is proved from the record of Enquiry proceedings Exhibit M-7 to M-16. For above reasons, I record my finding in Point No.1 in Affirmative.

8. **Point No. 2-** enquiry conducted against workman pertaining to their unauthorized absence. In view of my finding in Point No.1, the misconduct alleged against workman have been proved, question arises whether punishment of dismissal imposed against workman is proper and legal? Any of the workmen have not adduced any evidence. Union has not participated in the reference proceeding. As to what were the reasons for which the workmen remained absent from duties is not supported by any evidence. Considering long absence from duty of the workmen as per chargesheet, the punishment of dismissal imposed against workmen doesnot call for interference. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the General Manager, WCLtd., Kanhan Area PO Dungaria, Distt. Chhindwara and the Manager, Nandan Colliery No.1 of WCL, PO Nandan Distt. Chhindwara MP in terminating from the services of Shri Ramesh & 9 others is proper and legal.
- (2) Workmen are not entitled to any relief as claimed by Union.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2526.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 151/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/73/1992-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/92) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 12/09/2014

[No. L-22012/73/1992-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/151/92

PRESIDING OFFICER : SHRIR.B. PATLE

Organising Secretary,
R.K.K.M.S(INTUC),
PO Chandametta,
Distt. Chhindwara

...Workman

Versus

The Manager,
Nandan Mine No.I,
WCL, PO Nandan,
Distt. Chhindwara

...Management

AWARD

Passed on this 13th day of August 2014

1. As per letter dated 2-7-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. .L-22012/73/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the General Manager, WCL, Kanhan Area, PO Dungaria, Distt. Chhindwara and

the Manager, Nandan Coal Mine No.1 of WCL, Kanhan Area, PO Nandan Distt. Chhindwara (MP) is justified in terminating the services of Shri Purushottam S/o Angad, General Mazdoor Token No. 1375 and other nine workmen of Nandan Coal Mine No.1 of Nandan Group of Mines WCL w.e.f. date shown against the name of each workman in the attached list as Annexure I. If not, to what relief the concerned ten workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted through Secretary RKKMS Chandametta, Chhindwara at Page 6/1 to 6/8. The case of Union is that employees Purushottam S/o Angad, General Mazdoor Token No.1375, Sukhlal S/o Baisakhu, General Mazdoor Token No.1915, Ammilal S/o Ranglal, DPR, Token No.1318 Sundersingh S/o Shyamlal General Mazdoor Token No. 1416, Mangaria S/o Ranglal Token No. 2466, Natthu S/o Nandlal Driller/Tracer token no. 415, Bhura S/o Bihari General Mazdoor Token No. 302, Devlal S/o Gende, DPR Token No. 1699, Somlal S/o Maresa, DPR Token No. 1942 and Ammilal S/o Ojha DPR Token No. 1932 were employees of Nandan Mine No.1, Kanhan Area of WCL. They were permanent employees discharging duties with devotion. That employees belong to SC, ST, OBC. Those employees belong to remote village. They were visiting village once in a year. Their families used to stay in remote areas. The employees were staying along at coalfields without families. When any urgent messages about sickness of family members received, they were visiting their native places. That those employees on emergency went to their village during personal problems, own sickness. The employees properly informed management representative about sickness, domestic problems. However management decided to terminate their services. Chargesheet was issued to the them about their continuous absence without permission. Chargesheet was issued under clause 18/1 of standing orders. The detailed pleadings are raised that workman did not received chargesheet, they had no knowledge about enquiry. They had no knowledge about appointment of Enquiry Officer. Shri S.Kerkette, B.Prasad and Shri S.K.Bhargava were appointed as Enquiry Officer and Shri H.Rehman was appointed as management representative. Principles of natural justice were not followed by Enquiry Officer. The enquiry is vitiated. The findings of Enquiry Officer are perverse. Management acted arbitrarily while conducting enquiry. The employees received knowledge about enquiry only after service of order of dismissal. That employees are poor. They are unemployed, their family members are facing serious problems, exparte enquiry was conducted. The order of their dismissal is illegal. Union prayed for reinstatement of employees with consequential benefits.

3. IInd party submitted different Written Statement raising identical pleadings. That reference is vague, reference is not tenable. The Govt. mechanically made reference without application of mind. That there was no termination of Shri Purushottam and others. IInd party further submitted that all those employees were unauthorisely absent. Chargesheet were issued to them for absence from duties. Management provided various facilities of free accommodation, free watersupply to employees and their families. The employees were also provided medical facilities. Employees remained unauthorized absent. Said act constitutes misconduct on their part. Enquiry was properly conducted. It is denied that enquiry is vitiated for violation of natural justice. IInd party prays for rejection of claim.

4. As per order dated 21-12-2014, enquiry conducted against workmen is found legal. Considering pleadings & order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---|
| (i) “Whether the charges alleged against workmen are proved from Enquiry proceedings?” | In Affirmative |
| (ii) Whether punishment of dismissal imposed against workman is legal and proper? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workmen are not entitled to relief of rein-statement claimed by Union |

REASONS

5. The enquiry conducted against workmen is found legal and proper. The record of enquiry proceedings are produced at Exhibits M-1 to M-10. The scrutiny of record of Enquiry Proceedings shows management’s representative had stated about absence of all workmen from duty as such unauthorized absence. The evidence of management’s representative on the point of unauthorized absence of above employees was not shattered by cross-examination. It is surprising to say that evidence in Enquiry Proceedings proves the alleged misconduct of unauthorised absence against those workmen.

6. **Point No. 2-** from evidence in Enquiry Proceedings, unauthorized absence of workmen are proved. The Union as well as the employees have not participated in reference proceeding. Though evidence is adduced on their behalf. I do not find reason to hold that the punishment of dismissal imposed against them for unauthorized absence is exorbitant or illegal. Therefore, I record my finding in Point No2. In Affirmative.

7. In the result, award is passed under:-

- (1) The action of the General Manager, WCL, Kanhan Area, PO Dungaria, Distt. Chhindwara and the Manager, Nandan Coal Mine No.1 of WCL, Kanhan Area, PO Nandan Distt. Chhindwara (MP) is justified in terminating the serices of Shri Purushottam S/o Angad, General Mazdoor Token No. 1375 and other nine workmen of Nandan Coal Mine No.1 of Nandan Group of Mines WCL is proper and legal.
- (2) Relief prayed by Union is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 119/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/376/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL Balgi Project, and their workmen, received by the Central Government on 12/09/2014

[No. L-22012/376/2002-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/119/03

PRESIDING OFFICER : SHRIR. B. PATLE

Shri Kashi Kanth Mishra,
Working President,
Bharatiya Koyla Khadan Mazdoor Sangh (BMS),
Qtr. No. E/8, 15 Block Colony,
PO Korba Colliery,
Korba (Chhattisgarh) ...Workman/Union

Versus

The Sub Area Manager,
SECL, Balgi Project,
PO Balgi project,
Korba (Chhattisgarh)

...Management

AWARD

Passed on this 21st day of August 2014

1. As per letter dated 4-7-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/376/2002-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of the SECL, Balgi Project, Dt. Korba (Chhattisgarh) in terminating the services of Shri Gendh Ram, S/o Bahoran, Explosive Carrier vide order dated 29-12-01 is justified? If not, to what relief the said workman is entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by BKMS Union Bilaspur through president. The case of Ist party workman submitted by Union is that workman Gendram was appointed on 3-1-85 as PR Loader. On 1-2-87, he was converted to time rated worker. Considering his excellent service record, workman was promoted to explosive career Cat-II. That the workman suffered from illness since 13-6-00. He received treatment in hospital till 18-6-00. Information was given to the management. Workman attended for duty but he was not allowed to join the duties. Workman was told that he was transferred to Bhelwadi. Workman was not allowed to work at Bhelwadi also. Union had given letter dated 13-1-02 to the management requesting to furnish information. No information was furnished by the management. General Manager Korba Area vide his letter dated 25-4-02 informed that for unauthorized absence from 13-6-00, workman was terminated on 29-12-01. Any of the letters given by workman Gendram were not replied. On such ground, it is submitted that termination of service of Gendram is in violation of principles of natural justice. Union prayed for reinstatement with consequential benefits.

3. Management filed Written Statement opposing claim by the Union. Management did not dispute workman was initially engaged from 3-1-1985. He was regularized as General Mazdoor from 1-2-1987. He was promoted as Explosive Career on 25-1-91. IInd party contended that workman was habitual absentee. He was unauthorisely absent from duty without information. His leave was not sanctioned for many occasions. Workman was granted opportunity to improve himself. Workman remained absent unauthorisely without permission. On 13-6-00, chargesheet was issued to workman by RPAD.

No reply was given to the chargesheet. DE was conducted. Mr. S.Goel was Enquiry Officer, D.P.Mishra Under Manager was management's representative. Enquiry was conducted issuing notice. Workman did not present in enquiry. Workman was on duty for 109 days in 1997, 94 days in 1998, 40 days in 1999. The enquiry was conducted properly. Workman remained absent, not participated in enquiry. Termination of workman is proper.

4. Enquiry conducted against workman was found legal as per order dated 12-6-2013. Considering pleadings and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the misconduct alleged against workman of unauthorized absence is proved form evidence in Enquiry Proceedings? | In Affirmative |
| (ii) Whether punishment of termination from service of workman is proper and legal? | In Affirmative |
| (iii) If so, to what relief the workman is entitled to?” | Workman is not entitled to any relief as claimed by him. |

REASONS

5. Point No.1,2 As stated above enquiry conducted against workman is found legal. It is pertinent to note that workman has failed to adduce evidence. The question remains for decision is whether evidence in Enquiry Proceedings is sufficient to prove misconduct alleged against workman. The record of Enquiry Proceedings is produced at Exhibit M-1. The charge against workman is that he was unauthorisely absent from 13-6-00. Management's witness M.K.T.Anandram stated that he was working for 5 years as attendance of Gendram is shown 109 days in 1998, 64 days in 1999, 48 days in 2000. Workman has not participated in Enquiry Proceedings or Reference Proceedings. The findings of Enquiry Officer is based on evidence of Shri M.T.K. Anandram holding that charges of unauthorized absence are proved. Charge No.1 relates to habitual absence of workman which is supported by evidence of Shri M.T.K.Anandram. Considering the attendance of Ist party workman during 1998 to 2000, findings of Enquiry Officer are supported by same evidence. No interference is called for as the workman has failed to participate in Enquiry Proceedings as well as in reference proceeding. Punishment of dismissal doesnot call for interference. For above reasons, I record my finding in Point No.1,2 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management of the SECL, Balgi Project, Dt. Korba (Chhattisgarh) in terminating

the services of Shri Gendh Ram, S/o Bahoran, Explosive Carrier vide order dated 29-12-01 is proper and legal.

- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2528.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 184/1994) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/288/1994-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2528.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 184/94) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of FCI and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/288/1994-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/184/94

PRESIDING OFFICER : SHRIR.B.PATLE

Smt. Ganjali,
W/o Shri Kewalram
Gram Kunjnagar,
Tehsil Surajpur,
Distt. Surguja (MP)

(LRs Smt. Sukmin Bai, Chhappan Deo, Vishnu Ram,
Birendra Ram. Kaushal Ram & Narayan Ram)

Smt. Rajmen Bai
W/o Shri Amar Sai,
Near Railway Station Bistrampur,
Tehsil Surajpur,
Distt. Surguja (MP)

...Workmen/LRs

Versus

District Manager,
FCI,
Bilaspur (MP)

...Management

AWARD

Passed on this 14th day of August, 2014

1. As per letter dated 28-9-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012(288)/94-IR(C-II). The dispute under reference relates to:

“Whether the action of the District Manager, FCI, Bilaspur in not regularizing Smt. Gangajali W/o Kewal Ram, Smt. Rajmen Bai, W/o Late Amar Sai and Shri Dhaneswar Prasad S/o Shri Ogar Sai Ex Contract labourers on the service of FCI, FSD, Bistrampur as per agreement dated 12-4-91 is legal and justified? If not, to what relief are these three workmen entitled to?”

2. Present reference is unique that the illiterate labours are approaching pillars to post for justice. After receiving reference, notices were issued to the parties. However the Ist party workmen failed to appear and no dispute award was passed on 11-4-95. Said no dispute award was challenged by workman filing Writ petition 4134/95. Vide judgment dated 27-3-97, said award was set-aside to file application for setting aside exparte award. Accordingly the application for setting award was filed. In said application was opposed by IInd party. It appears that exparte award was set-aside and statement of claim was filed by workmen at Pages 16/1 to 16/7. Case of workman is that Smt. Gngajali was working as casual labor on daily wages since 1984 in Bistrampur storage depot. That IInd party had entered in agreement dated 10-4-91. However she was not extended benefit of said agreement. That workman was kept out of job in violation of Section 25-F, N of I.D. Act. She was illegally retrenched. Workman further submits that FCI is undertaking of Central Govt. the provisions of FCI Act, 1964 governs service conditions of the employees in addition to FCI Staff Regulation, 1971. That provisions of I.D. Act are applicable. Ist party workman claims to be covered under Section 2(s) of I.D. Act. Writ petition No. 13598 of 1983 was filed by FCI workers Union against Govt. of India requesting prohibiting contract labours by FCI. After discussion with Union agreement was executed on 12-4-91. Direct Payment system was introduced w.e.f. 1991. Union issued bio-data forms to FCI workmen and same were jointly examined by management Union Representative for regularization in service. The orders were issued in March 1992 regularising some of the labours. Ist party workman, Rajman Bai & Dhaneshwar were not regularized by FCI, Bistrampur depot. That the list produced by workman document No. 1 in support of claim, her name is included. As above workmen were not regularized due to discriminatory treatment, their services were discontinued with violation of Section 25-F, N of I.D. Act, dispute was

raised before ALC, Shahdol. On failure report submitted by LC, the dispute was referred.

3. It is reiterated that workmen were working as contract labour at Bistrampur depot since about 7-8 years. However they were not regularized as per the agreement. They had completed more than 240 days continuous service. Their services were not regularized as per agreement. They were discontinued in service in violation of statutory provisions. On such ground, Ist party prays for regularization of their services as per agreement dated 12-4-91 with consequential benefits.

4. IInd party submitted Written statement at Page 18/1 to 18/9. IInd party submits that it is corporation established under Act of 1964. That management appoints handling and transport contractors for getting the work done at various depots. It is entirely lookout of the contractors to find labours and get work done. IInd party has no administrative or disciplinary control over the labours engaged by the contractors. The FCI workers Union and representative of the Union safeguards interest of the workers. Union was present for implementation of Notification dated 11-11-90 issued by Govt. of India under Section 10 of Contract Labour (R&A) Act, 1970. The committee was formed by FCI Union on 12-4-91. The minutes of Committee were recorded. After negotiation held between FCI Union and management direct payment system was introduced in the depots and godowns including Bistrampur depot in MP. As per said agreement, Union was empowered to nominate mates in the depot and in turn has to execute with the District Manager. The FCI Union and number of hands who assessed were given forms to be filled by workers. The Union after verifying the same and after examining used to fulfill bio-data forms duly authenticated and recommended for direct payment system.

5. IInd party further submits the implementation of notification among other facts discussed by FCI Workers Union. The agreement was signed on 12th April, 1991 introducing direct payment system. Accordingly 50 labours were regularized as per requirement. That Gangajali was never engaged by FCI. Probably she was engaged with handling and transport contractor Ishwarchand. That she is not covered as workman under Section 2(s) of I.D. Act as FCI had not engaged her. That employer employee relationship does not exist between the parties. The dispute is raised after long lapse of time. As per laid down policy, decision taken by the management, the agreement was settled with Union departmentalization of labours was made after fulfilling the formalities on submission of biodata by labours through Union. IInd party has denied employer employee relationship and opposed relief for regularization claimed by him.

6. Workman Gangajali filed rejoinder at pages 19/1 to 19/5 reiterating her contentions in statement of claim. It is emphasized that the documents which were authenticated are claimed for regularization.

7. Rejoinder is filed by management at Pages 20/1 to 20/8 reiterating contentions in Written Statement.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the District Manager, FCI, Bilaspur in not regularizing Smt. Gangajali W/o Kewal Ram, Smt. Rajmen Bai, W/o Late Amar Sai and Shri Dhaneswar Prasad S/o Shri Ogar Sai Ex Contract labourers on the service of FCI, FSD, Bistrampur as per agreement dated 12-4-91 is legal and justified? | In Negative as related to Gangajali Bai only |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

9. Present dispute pertains to 3 labours Gangajali, Rajman Bai and Dhaneshwar Prasad. No dispute was passed on 11-4-95. Said award was challenged in Writ Petition. However the statement of claim is filed only by Gangajali. During pendency of reference proceeding, Gangajali died. Application for substituting her LRs is filed. Name of LRs are Smt. Sukmin Bai, Chhappan Deo, Vishnu Ram, Birendra Ram, Kaushal Ram & Narayan Ram is substituted as her LRs. Gangajali filed her affidavit of evidence. She has stated that she was working as contract labour at Bistrampur. She was doing work of cleaning food grains. She refers to document No. 2 produced with statement of claim. That she was discontinued from September 1991 without any enquiry. The contract labour were prohibited. In her cross-examination, she stated that she was working under contractor Ishwarchand. She was working all years with FCI contractor. She was not member of any Union. She had not put thumb marks in the payment register. She was working 4-5 days in a week. Other worker not adduced any evidence to support claim.

10. Management's witness Shri B.R.Pasi filed affidavit of his evidence supporting contentions in Written Statement of management but he did not stand for cross-examination. Next affidavit of Asat Siddiqui is filed as management's witness. The witness of the management has stated that as per prevailing contracts, work was done by FCI contractors appointed at Bistrampur depot. The contractors used to engage their labours. Management of FCI had no control over them. That

Committee was formed by FCI workers Union on 12-4-91. The minutes of meeting produced at Annexure M-2. As a result of negotiation between Union and management, mate system was introduced. That as per Clause C of agreement, biodata forms was provided by management to Union. The forms were to be filled by workman and submit to the office. That IInd party had submitted forms of 5 candidates authenticated by Union. The name of Gangajali was not in the biodata forms submitted by Union. The witness of the management is not cross-examined. The evidence remained unchallenged. The evidence of Gangajali about document No.2 submitted with her statement of claim is not challenged. In document No.1 submitted by workman, the names at Sl. No. 75 to 78 finds note at bottom that they were not members of the Union. Name of Gangajali is appearing at Sl.No. 77. Though the name of Gangajali and other workers were in the list, they were not given benefit of agreement dated 12-4-91. Gangajali was discontinued from service without giving benefit for regularization. Management has produced notification dated 1-11-90 prohibiting contract labors in the depots. The agreement dated 12-4-91 introducing direct payment system. Workman Gangajali was not given benefit of said agreement. The service were discontinued in the month of September i.e. after about 5 months of said agreement. As per the notification when contract system was abolished, the employees are given benefit of direct payment system, the deceased Gangajali becomes the employee of FCI. As such employer employee relationship between parties needs to be assumed. Instead of regularizing her services under direct payment system, termination of her service without notice or paying retrenchment compensation is illegal. FCI had regularized 50 employees as per agreement but workman Gangajali was denied said benefit. Therefore the action of management is not legal. For above reasons, I record my finding in Point No.1 in Negative.

11. **Point No.2-** In view of my finding in Point No.1, action of the management is not legal instead of regularizing services of Shri Gangajali as per agreement dated 12-4-91, she was discontinued from work. Gangajali had died during pendency of reference. Consequently relief of reinstatement is requested. Considering the facts of case in my considered view, compensation Rs. 75,000 would be appropriate to Gangajali. Other labours have not adduced any evidence, not participated in reference therefore claim cannot be accepted. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the District Manager, FCI, Bilaspur in not regularizing Smt. Gangajali W/o Kewal Ram is not legal and proper.

- (2) IInd party is directed to pay compensation Rs. 75,000 to the workman Gangajali.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 123/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/314/2000-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2529.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of FCI and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/314/2000-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/123/01

Presiding Officer : SHRI R.B.PATLE

Regional Working President,
FCI Employees Association, 8/86,
Sarita Complex,
Near 5 No. Bus Stop,
Bhopal

....Workman/Union

Versus

Sr. Regional Manager,
FCI, Regional Office,
Chetak Building,
MP Nagar, Bhopal

.....Management

AWARD

Passed on this 11th day of August 2014

1. As per letter dated 22-6-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/314/2000-IR(C-II). The dispute under reference relates to:

“Whether denial of selection grade to Shri B.M.Singh from the date of eligibility i.e. 1-12-1987 by the management of FCI Bhopal is legal and justified? If not, to what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at pages 2/1 to 2/2. Case of workman is that there is scheme for regularizing in FCI as per circular No. 22 of 1992 dated 30-12-92. The placement in selection grade is for the employees who have completed 12 years of service subject to the condition that the total selection grade post shall be restricted to 30 % of sanctioned strength as on 1-12-1987, the employees proposed to be placed under selection grade should be free from vigilance angle. That workman was deprived his legitimate right to be placed under selection grade despite he had completed 12 years service as Assistant Grade III. That workman was appointed in post of Asstt. Grade III in 1973. His colleagues R.B.Gautam was given benefit of this scheme. The comparative seniority particulars are submitted by workman. It is reiterated that the workman was denied benefit of selection grade is illegal. On such contentions workman prays for extending him benefit as per the scheme.

3. IInd party filed Written Statement at pages 11/1 to 11/6 opposing claim of the workman. That Ist party workman was appointed in post of Asstt. Grade II in 1973. FCI introduced scheme for selection grade in 1992 issuing Circular No. 22 of 1992 giving retrospective effect from 1-12-1987. Said benefit was to be given on certain conditions. The total selection grade post were restricted to 30 % of the sanctioned strength on 1-12-87. If a person falls within 30 % of total strength, he is not entitled for grant of selection grade if he is not found fit for such placement. Since the workman was not free from Vigilance angle, he was not found fit for placement in the selection grade. Chargesheet was issued on 2-3-93. Penalty of sensor was imposed against him on 12-12-94. Workman also issued chargesheet on 2-3-93, penalty was imposed on 12-1-94. Workman was under vigilance case from 2-3-93 till 31-8-94. In said backdraw, the workman was denied selection grade. IInd party denies allegation of workman. That special grade was denied to him is malafide. IInd party is reiterating about the punishment imposed against workman. IInd party prays for rejection of claim of workman.

4. Workman has filed rejoinder at pages 13/1 to 13/3 reiterating his contentions in statement of claim and denied adverse contentions raised in Written Statement filed by management. Management filed reply to the rejoinder at pages 15/1 to 15/8 denying contentions raised by workman in rejoinder.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) “Whether denial of selection grade to Shri B.M.Singh from the date of eligibility i.e. 1-12-1987 by the management of FCI Bhopal is legal and justified?” | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

6. Workman is claiming selection Grade benefit as per scheme under Circular 22/92 dated 30-12-92. Workman in his affidavit of evidence has stated that he was appointed as EG-III(D) in 1973. He was eligible for selection grade on 1-12-1987. There was no vigilance case pending against him on 1-12-1987. He was promoted on post of EG-II(D) on 31-12-90. That selection grade was started in FCI from 1992-93. The employees who completed 12 years service on the post were eligible for selection post. In his cross-examination workman claims ignorance about promotion policy of clerical staff in FCI. That he was promoted as Asstt. Grade-II on 31-12-90. He claims ignorance under which policy promotion was given to him. He also claims ignorance under which policy on completion of 22 year service benefit of selection grade was given. Workman says his next promotion would be on the post of Assistant Grade I. He claims ignorance whether ACRs of 5 years are considered for promotion.

7. Management’s witness Shri P. Subramanian filed affidavit of his evidence. His affidavit is devoted about scheme of selection grade introduced as per Circular No.22 of 1992. Retrospective effect was given from 1-12-1987. The employees completed 12 years service were entitled to be placed in selection grade. The restriction was of 30 % staff working as on 1-12-1987. Management’s witness has further stated that the workman was served with chargesheet. He was facing disciplinary enquiry. Penalty of sensor was imposed on 12-1-94. Next chargesheet was issued to workman on 3-1-93. Penalty of recovery was imposed against him. Recovery continued till 31-8-94. Workman was not found eligible for selection grade. The evidence of management’s witness remained unchallenged as workman failed to cross-examine the management’s witness. I find no reason to disbelieve unchallenged evidence of the management’s

witness. Workman was facing disciplinary enquiry. Punishments were imposed against him in 1993-94. The claim of workman for selection grade cannot be upheld. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. In the result award is passed as under:-

- (1) The denial of selection grade to Shri B.M.Singh from the date of eligibility i.e. 1-12-1987 by the management of FCI Bhopal is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2530.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 50/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/483/1999-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of ECL and their workmen, received by the Central Government on 12/09/2014

[No. L-22012/483/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

Present : Sri PRAMOD KUMAR MISHRA, Presiding Officer

REFERENCE NO. 50 of 2000

PARTIES : The management of Central Kajora Colliery, ECL

Vs.

Sri Mahendra Bhuia

REPRESENTATIVES:

For the Management : Sri P. K. Das,
Ld. Advocate

For the Union (Workman) : Sri Rakesh Kumar,
General Secretary, KMC

Industry : Coal State : West Bengal

Dated – 05.08.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/483/99/IR(CM-II) dated 28.06.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Central Kajora Colliery of M/s. ECL in dismissing Sh. Mahendra Bhuia, U.G. Loader from services is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order NO. L-22012/483/99/IR(CM-II) dated 28.06.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 50 of 2000 was registered on 01.08.2000. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative and filed their separate sets of written statement in support of their respective claims.

In brief as per written statement of the workman the facts are that, Sri Mahendra Bhuia, the delinquent employee, was regular employee of Central Kajora Colliery of M/s ECL, having U.M. No. 55 B Form No. 544 his date of appointment 27.02.1991 and date of birth is 21.08.1969. The management of Central Kajora Colliery issued a Charge Sheet to him on 09/12.06.1995 for his absence w.e.f. 16.01.1995. Sri Mahendra Bhuia could not participate in the enquiry because he was sick. Management held enquiry ex parte. Management of Central Kajora Colliery recommended the dismissal of Sri Mahendra Bhuia. Accordingly Sri Mahendra Bhuia was dismissed from service w.e.f. 18.08.1996. During reconciliation proceeding management give contradictory statement that workman did not participate in the enquiry and the enquiry conducted ex parte. But in the same para management said that full and fair opportunity was given to the worker. In the instant case enquiry was not held properly. Workman has challenged the fairness of the enquiry because he was not given opportunity to defend himself. In this instant case the total period of absence is less than 10 months and that is too on medical ground. 2nd show cause notice was not been issued to the worker. As per observation

Hon'ble Supreme Court 2nd show cause notice is must. Sri Mahendra Bhuia is a young man of less than 35 years. In his family he is the only bread-earner, he is facing starvation.

On the other hand the management has stated in his written statement that concern workman was working as Ex-U.G. Loader of Central Kajora Colliery. The concerned workman was absenting himself from duty unauthorizedly. The concerned workman was absent from his duty unauthorizedly from 16.01.1995 without any leave. He was issued charge sheet vide No. CKC/P & IR/C-6/19/5235 dated 09/12.06.1995 under clause 17 (1) (n) and (c) of the model standing order applicable to the coal industry and the same was sent by registered post with A/D in the recorded address of the charge sheeted workman. But he failed to submit his explanation for his long absence. Therefore domestic enquiry was held by the competent authority. Enquiry officer issued a notice of enquiry to the ex-workman to his recorded address as per service record. But the workman did not participate in enquiry proceeding in spite of all reasonable opportunity. Finally the said enquiry was held ex-parte on 16.12.1995. Charge of misconduct was proved against the workman. The disciplinary authority was pleased to pass an order of dismissal of concern workman. The punishment awarded in the instant case was quite proportionate and accordance with the gravity of misconduct. The disciplinary authority also considered the past record of the concern workman. The allegation made in the written statement of the union that management did not gave opportunity to the worker in the enquiry proceeding is wrong. The worker is habitual absentee.

In rejoinder-cum-written argument of the union, the worker stated that Sri Mahendra Bhuia ex-employee was absent only 4 months and 25 days i.e. from 16.01.1995 to 12.06.1995 for which he was charge sheeted. The job of U.G. Loader is very harsh, hard and hazard everybody can't work underground. Sri Mahendra Bhuia is physically weak, he was not able to perform the duty of U.G. Loader. He requested the management for deploying in time rated job but his request was not considered. Consequently the worker became sick and due to sickness he did not perform his duty. The management of ECL allows thousands of workers in light of Memo of Settlement signed before RLC(C) on 22.05.2007. The worker whose absence is under 9 months and less than 45 years of age are allowed to join the duty. Sri Mahendra Bhuia fulfill the condition of Memo of Settlement, his date of birth was 21 years as on 21.08.1989 i.e. he was less than 45 years of age and absence was from 16.01.1995 to 12.06.1995 i.e. less than 5 months.

Sri Mahendra Bhuia after his sickness when he returns on duty he was not given any information about date of enquiry on 17.11.1995. But the date of enquiry

was fixed on 06.12.1995. It was not possible to reach the letter by post before 06.12.1995. Again the date of enquiry was fixed on 15.12.1995 and notice of the enquiry dispatched to him on 07.12.1995. Enquiry Officer did not give him time to know the date of enquiry and to participate in the enquiry proceeding. Finally the enquiry was declared ex-parte. Management did not issue 2nd show cause notice before passing the order of dismissal. The punishment of dismissal is very harsh and extreme punishment which should have been avoided. The workman is out of job since 1995 and remained without wages for 18 years. Sri Mahendra Bhuia is an illiterate person and don't know the rules and regulations of the company. He has prayed that he should be reinstated to his duty with full back wages and other consequential benefits.

The union has produced the Xerox copy of Enquiry Report, Dismissal Order and Memorandum of Association dated 22.05.2007. Workman Sri Mahendra Bhuia has examined himself as witness.

I have heard the argument of Sri Rakesh Kumar, General Secretary of KMC on behalf of the delinquent workman and Sri P. K. Das Ld. Advocate on behalf of the management.

It is not disputed that Sri Mahendra Bhuia the delinquent employee is permanent employee of Central Kajora Colliery. It is admitted that the delinquent workman was absent from 16.01.1995. According to the delinquent workman he was absent for 4 months and 25 days i.e. from 16.01.1995 to 12.06.1995. It is also admitted that enquiry against the delinquent workman is ex-parte. The domestic enquiry conducted by the management has been challenged by the workman.

Sri Rakesh Kumar appeared on behalf of the delinquent workman has argued that the enquiry was not fair and bonafied. The delinquent workman was not given proper opportunity to put his defence version. Enquiry proceeding was held ex-parte. Sri Rakesh Kumar was also argued that the worker was under 45 years of age and his absence is less than 9 months. Therefore as per Memorandum of Settlement he should be reinstated. On the other hand Sri P. K. Das Ld. Advocate on behalf of the management has argued that delinquent workman was given sufficient opportunity in the enquiry proceeding. The workman was aware of the enquiry proceeding but he did not participate in the enquiry proceeding. Therefore enquiry proceeding was held ex- parte, he argued that the delinquent workman is habitual absentee.

The domestic enquiry was conducted by Enquiry Officer on 06.12.1995 and on 15.12.1995. It transpires from the enquiry report that the date of enquiry was fixed on 06.12.1995 the notice was sent to delinquent employee but on which date the notice was sent to the delinquent employee is not disclosed. It is also not disclosed that the

notice was actually served on the delinquent employee. In the enquiry report it is also not disclosed that in what date the notice was served on the delinquent workman. In the enquiry report there is not reference of postal receipt or postal certificate. On 06.12.1995 enquiry proceeded ex parte. On 06.12.1995 the date of enquiry was fixed for 15.12.1995, notice of date of enquiry for 15.12.1995 was sent to the delinquent employee on 07.15.1995. The Enquiry Officer did not insure about the receipt of postal information to the delinquent workman regarding enquiry. It was not ensured by the Enquiry Officer whether the notice sent to the workman was ever received before the date of enquiry.

Domestic enquiry in Industrial Law has acquired great significance. Industrial adjudication attaches considerably importance to such enquiry. In number of cases, the Hon'ble Supreme Court has observed that an enquiry is not an empty formality, but an essential condition to the legality of the disciplinary order. In other words before the delinquent workmen can be dismissed for misconduct, the employer shall hold a fair and regular enquiry into the misconduct. Dismissal without holding a regular enquiry would be an illegality. It is well settled that disciplinary enquiry has to be a quasi-judicial enquiry. It should be held according to principles of natural justice and Enquiry Officer has a duty to act judicially because the charges of misconduct, if proved, will result not only in deprivation of livelihood of the workman, but also attach stigma to his character.

In dealing with domestic enquiries held in industrial matters, the fact that the large majority of cases employees are likely to be illiterate and ignorant, should be borne in mind. The Enquiry Officer has to take care in the facts and circumstances of such case that the defence of the workman is not prejudiced in any manner. The rules of natural justice require that the workman proceeded against, should be informed clearly of the charges leveled against him, witness should be examined in his presence. The workman should be given a fair opportunity to examine witness, in support of his defence.

Unfair or wrongful discharge or dismissal of industrial workmen as a measure of disciplinary action is one of the major causes of industrial dispute though the employers have always regarded the right of disciplinary action as a concomitant to the efficient attainment of the objectives of industrial activity. On the other hand, the workers and their unions have tended to regard protection from arbitrary or unjustified disciplinary action as one of the most important functions of the trade union activity.

In all cases of detrimental action taken against a worker, for misconduct, the employer has to establish whether the action was taken for "Just and sufficient reasons". An industrial worker is always entitled to

question the property and justice of punitive or detrimental action taken against him.

It is worth mention that the first date of enquiry was fixed on 06.12.1995 though enquiry officer without ensuring that the notice was actually received by the workman, proceeded ex-parte. If the worker did not appear, the Enquiry Officer ought to have adjourned the enquiry proceeding rather to proceed ex-parte. Especially in this circumstance when it is doubtful that notice regarding date of enquiry was served on delinquent workman. On 06.12.1995 the date of enquiry was fixed for 15.12.1995. Again Enquiry Officer did not ensure that the notice regarding date of enquiry on 15.12.1995 was served on delinquent worker. Instead of adjourning the enquiry proceeding he proceeded ex parte.

The Memorandum of Settlement dated 22.05.2007 on which reliance has been place by the union is recital of representative of the management as well as union. It has been settled that the employees who were absent for a period upto 9 months and under 45 years of age will be considered for reinstatement on merit basis. Undoubtedly on date of passing dismissal order the delinquent employee was less than 45 years. Besides delinquent workman was absent for a period of less then 5 months. Therefore as per Memorandum of Settlement delinquent employee may be eligible for reinstatement.

Before imposing a punishment of dismissal, it is necessary for the disciplinary authority to consider totality of facts and circumstances of delinquent employee, his social and economic background and compelling circumstances to commit misconduct. Punishment of dismissal for absence of less than 5 months is too harsh punishment and disproportionate to alleged misconduct. During period of dismissal the delinquent workman was not employed anywhere. Though in short span of service the delinquent workman was previously absent. Sri Mahendra Bhuia the delinquent workman in his statement stated that he was sick in his village but he has no document regarding his treatment. He has also stated that he sent information to the Labour Officer, but has no proof. Whereas in enquiry report Sri Tapan Kumar Mondal, Leave Clerk, who maintains leave record has stated that he did not get any leave application of Sri Mahendra Bhuia from 16.01.1995 till date. From this fact it appears that Sri Mahendra Bhuia was absent from duty without any leave. In enquiry report the Enquiry Officer has stated that Sri Mahendra Bhuia was a habitual absentee. In the year 1992 his attendance was only 88 days, in 1993 only 47 days, in 1994 only 51 days and in the year 1995 (upto 16.01.1995) his attendance was only 9 days.

In view of this matter I think it just and proper to modify and substitute the punishment exercising the power u/s II (a) Industrial Dispute Act 1947. According the order of dismissal of the delinquent workman

Sri Mahendra Bhuia is hereby set-a-side and he is directed to be reinstated with the continuity of service. The delinquent workman be imposed a punishment of strict warning not to repeat the same in future. It is further directed that the workman will be entitled to get only 50% of the back wages.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 88/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/88/2000-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2531.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of ECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/88/2000-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

Reference No. 88 of 2000

PARTIES : The management of Khas Kajora Colliery,
ECL

Vs.

Sri Ramchandra Mallah

REPRESENTATIVES:

For the management : Sri P. K. Das,
Ld. Advocate

For the union (Workman) : Sri Rakesh Kumar,
General Secretary, KMC

Industry : Coal State : West Bengal

Dated – 05.08.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/88/2000-IR(CM-II) dated 15.09.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khas Kajora Colliery of M/s. ECL in dismissing Sh. Ramchandra Mallah U.G.L. from services is legal and justified? If not, to what relief the workman is entitled?”

Having received the Order No. L-22012/88/2000-IR(CM-II) dated 15.09.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 88 of 2000 was registered on 27.09.2000. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative and filed their separate sets of written statement in support of their respective claims.

In brief the fact of the workman concerned as per his written statement is that Sri Ramchandra Mallah U.G. Loader of Khas Kajora Colliery was permanent worker having U.M. No. 555021, Sri Ramchandra Mallah was charge sheeted on 24.11.91 for his absence from duty. He replied the charges and informed the management that he was sick. He also submitted his treatment paper in support of his sickness. His treatment was done at colliery dispensary, Kajora Area Hospital & Government Hospital. He also sent the information to the management that he was sick and could not attend his duty. His absence was very well confirmed by his medical certificate and his absence was beyond his control and was unintentional. The workman belongs to backward community and being illiterate was ignorant of the rules and regulations of the company. Since he became sick, he could not join the duty. The punishment of dismissal is very harsh in this matter. As per directive of Supreme Court & also as per C.I.L. guidelines punishment should not be disproportionate to the nature of offence. Worker explained the position while replying of the 2nd Show Cause why he could not attend his duty. Management should take lenient view because absence of the worker was beyond his control. This fact was known to the management because the worker was treated by the colliery

medical officer. Colliery medical officer referred the worker to Area Hospital. Memo was counter signed by the manager of the colliery. Sri Ramchandra Mallah is a young man and can work as U.G. Loader. Dismissal of Sri Ramchandra Mallah is wrong and he should be reinstated in service with full back wages.

On the other hand the defence case of the management as per his written statement is that the instant reference is bad in the eye of law and the very dispute is entirely misconceived one. The case of the management is Sri Ramchandra Mallah Ex-U.G Loader absented himself from his duties w.e.f. 28.12.1997 to 25.02.99 i.e. 14 months without any permission or intimation to the management. Sri Ramchandra Mallah was charged vide Letter No. KKC/P&IR/C-6/19/98/Habitual/183 dated 24.11.1998 for his above act of misconduct under class 17(i)(d)&(n) of Model Standing orders applicable in the Coal Mining Industry. He neither submitted his reply to the said charge sheet nor sent any information in this regard. Ultimately a domestic enquiry was ordered to be conducted. The delinquent was issued three enquiry notices but he did not bother to attend the enquiry nor sent any information. Ultimately on 4th notice of enquiry, he came for enquiry on 26.02.1999 and requested for next date for 02.03.1999. Accordingly the enquiry held on 02.03.1999 in which the delinquent fully participated along with co-worker. After the conclusion of the enquiry proceeding the enquiry officer held the workman guilty of the charges of misconduct as framed. After enquiry proceeding the worker was given a second show cause notice vide reference No. KA/PM/C-6/10/16/2913 dated 01.04.1999 a chance to explain. The reply of worker dated 12.04.1999 was not convincing. Therefore the disciplinary authority awarded an order of dismissal of the ex-workman from his service vide Letter No. KA/PM/C-6/10/426/2319 dated 20.04.1999. It is denied by the management that the workman was sick and got treatment in outside hospital since the ex-workman did not bother to inform. In previous occasion also ex-worker was absent in his duty. In year 1996 his attendance was only 125 days and in year 1997 his attendance was only 79 days which is clear indication of his habitual absenteeism. The dismissal of workman is totally justified and punishment of the workman is not disproportionate at all. In enquiry the workman was offered full opportunity and principle of natural justice was complied.

I have heard the argument of Sri Rakesh Kumar on behalf of the union/workman and Sri P. K. Das Ld. Advocate on behalf of the management.

It is not disputed that the worker Sri Ramchandra Mallah was Ex- U.G. Loader in Khas Kajora Colliery. It is also not disputed that Sri Ramchandra Mallah was absent from his duty through as per written statement of the worker he was absent due to his sickness.

The validity and fairness of the enquiry proceeding is not challenged. The delinquent employee had participated in the enquiry proceeding. It is not the case of the worker that enquiry officer was biased or enquiry proceeding was not fair. In the charge sheet Reference No. KKC/P&IR/C-6/19/habitual/98/183 dated 24.11.1998 the worker is shown to be absent from 28.12.1997 till date. Besides he has been shown absence from his duty in 1996 & 1997. In 1996 he was present 125 days on duty and in 1997 he was physically present only 79 days. The Xerox copy of the treatment papers has been filed by the worker as per the document it appears that Sri Ramchandra Mallah was treated by Medical Officer of Khas Kajora Colliery of ECL, thereafter he was treated in Laudoha Block Primary Center, Govt. of West Bengal in Burdwan district. In Laudoha Block Primary Health Center he was treated as outdoor patient on 02.01.1998, 25.01.1998, 03.05.1998 and 18.01.1999. On 30.01.1999 he was declared fit by Medical Officer to resume his duty on 01.02.1999 again, certificate was issued by the Medical Officer of Laudoha Block Primary Health Center on 22.02.1999 that Sri Ramchandra Mallah was suffering from U.T.I from 01.02.1999 to 22.02.1999 and fit to resume his duty on 23.02.1999 in reply to the charge sheet issued by the management. It is significant to note that Sri Ramchandra Mallah was treated in Laudoha Block Primary Health Center as outdoor patient. He was not admitted for treatment as indoor patient in Laudoha Block Primary Health Center. Therefore Sri Ramchandra Mallah was in position to intimate the management about his absence on medical ground at least by post. But there is complete absence of any such documents on record. It appears from the record that delinquent employee Sri Ramchandra Mallah was habitual absentee. Even he did not care to intimate the management or his superior officer regarding his unauthorized absence. But even then for such period of unauthorized absence the punishment of dismissal is harsh punishment. The hon'ble Apex Court in Mukund Engineering Works Vs. Bansi Purushottam 1994 SCC Supl. (2) 725, held that in totality of circumstances the workman should either get reinstated without back wages or back wages without reinstatement.

However I am of the considered view, that the punishment of dismissal for an unauthorized absence is harsh punishment, which is disproportionate to the alleged misconduct. In this view of the matter I think it just improper to modify and substitute the punishment exercising the law u/s 11(a) of the Industrial Dispute Act 1947 and according the impugned order of dismissal of the concern workman is hereby set aside and he is directed to be re-instated with continuity of the service without back wages. I think it appropriate that the delinquent workman be punished with stoppage of one increment without cumulative effect.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2532.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 23/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/64/2012-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of J. K. Nagar Colliery, M/s. E.C. Ltd., and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/64/2012-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.**

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 23 OF 2012

PARTIES : The management of J. K. Nagar Colliery of M/s. ECL

Vs.

Shri Bhudhan Dhibar

REPRESENTATIVES:

For the management : None

For the union (Workman) : Sri. D. K. Routh

Industry : Coal State : West Bengal

Dated – 13.08.14

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/64/2012-IR(CM-II) dated 26.04.2012 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of J. K. Nagar Colliery of M/s. ECL in not payment HRA @ 10% of basic pay to Sri Bhudhan Dhibar is fair and justified? To what relief the concerned workman is entitled to?"

Having received the Order of Letter No. L-22012/64/2012-IR(CM-II) dated 26.04.2012 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 23 of 2012 was registered on 16.05.2012 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that the case was kept reserved for an award by my predecessor (Late Jayanta Kumar Sen, the then P.O.) because Sri. D. K. Routh, Branch Joint Secretary had made an endorsement that the workman is not interested to proceed with the case further. Since the workman as well as the union are not interested to proceed with the case further. As such the case is closed and accordingly a 'No Dispute Award' may be passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2533.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 33/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/16/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2533.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.33/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial

dispute between the management of SECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/16/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/33/99

PRESIDING OFFICER : SHRIR.B.PATLE

Branch Secretary,
S.K.K.M.S, Branch Banki,
PO Bankimongra,
Distt. Bilaspur

....Workman/Union

Versus

Dy.General Manager,
SECL, Banki Colliery,
PO Banki Mogra,
Distt. Bilaspur (MP)

.....Management

AWARD

Passed on this 28th day of August 2014

1. As per letter dated 16-12-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/16/98-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL, Banki Colliery, Distt. Bilaspur (MP) in not changing the date of birth of Shri S.C.Haldar, Mechanical Fitter from 1-1-1941 to 1-10-1946 is justified? If not, to what relief the workmen is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/2. Case of Ist party workman is that he is holding ITI, in electrician Trade. He joined service with IInd party on 20-12-65 as Electrician Grade-I mazdoor. In Form B register as per Mines Rules, his date of birth was recorded 11-10-46. He was promoted in 1973. After merger of coal India, Mines rules were amended in 1978. Form B register was also amended. Fresh Form B was prepared. The formate were supplied on 29-4-87. Objections were called from workman filling the forms were also required. Applicant submits that his date of birth was wrongly shown as 1-1-1941. That as per educational certificate, his date of birth is 11-10-1946.

That his representations for correction of date of birth were not considered. He was retired on 1-1-01. Workman prays for correction of date of birth and his reinstatement in service.

3. IInd party filed Written statement at Page 8/1 to 8/8. IInd party denied claim of workman. It is submitted that workman was appointed on 28-12-1965 by NCDC. As per coal Mines legislation management has to maintain statutory record. under Mines Rules, register of employment called Form B is required to be maintained. It is reiterated that date of birth of workman was declared 1-1-1941 in Form B Register of workman. It is further submitted that the dispute regarding age is required to be decided as per guidelines provided in NCWA-II. Instruction No.37 notice was displayed on 1982 inviting objection within 30 days. In said notice, date of birth of workman was shown 1-1-1941. Workman did not submitted objection. If he had any grievance, objections should have been submitted within 90 days.

4. It is further reiterated that as per NCWA-III, modification instruction No. 37 of I.I.No.76 earlier was revised. The dispute about date of birth of workman was examined by the Committee and found that date of birth of workman was properly recorded. Workman has not produced any documents admissible as per rules. Rest of the documents of workman are denied. Workman has not explained why the certificates as per rules were not produced. The correction of date of birth beyond reasonable time should not be encouraged. On all such contentions, IInd party claims for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the action of the management of SECL, Banki Colliery, Distt. Bilaspur (MP) in not changing the date of birth of Shri S.C.Haldar, Mechanical Fitter from 1-1-1941 to 1-10-1946 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

6. Workman is claiming that his date of birth was recorded 11-10-1946 in Form B. that he was prematurely retired accepting his date of birth 1-1-1941. The contentions of workman are totally denied by management. Workman filed affidavit of his evidence supporting his claim. He joined service on 20-12-1965, after 1973, NCDC was merged in Coal India Ltd. and after merger, fresh service record was prepared in which he submitted his date of birth as 11-10-1946. Said date of

birth was also recorded in service record, Provident Fund etc. he should not have been retired treating his date of birth as 1-1-1941. In his cross-examination workman says he joined service on 20-12-1965, at that time he was of 18 years of age. Attested copy of ITI certificate was submitted by him to the management during appointment. The certificate was not attested by any Gazetted Officer. He passed ITI 1 October 1965, he received ITI education from Chhattisgarh. That his family migrated from Dhaka to Raipur. They have settled in Calcutta for some period. He says that it is duty of management to maintain Form B, the original service record produced in the matter was subsequently prepared. His date of birth is not original record. He claims ignorance whether he has put his thumb mark on the original Form B was referred to witness. He says his name is at Sl. No.70 in form B, the date of birth is subsequently entered. He claims ignorance whether in 1972 management displayed notice calling objections to the date of birth. The applicant says that he was on leave and did not raise any objection. That he submitted application one year before his retirement.

7. Documents produced by applicant Exhibit W-1 is that applicant has claimed his date of birth was 11-10-1946. In Exhibit W-2, copy of admit card from Board of Intermediate Secondary Education, his date of birth is shown as 11-10-1946. The admit card is not admissible as proof of date of birth as per the instructions in NCWA-II, III. Document Exhibit W-3 doesnot show date of birth of workman. It is migration certificate dated 13-3-1964, the age of workman is shown 18 years workman had not produced school leaving certificate or any documents admissible to prove his date of birth was 11-10-1946. Documents Exhibit M-1, M-2 produced by IInd party also donot show his correct date of birth. Document Exhibit M-3 notice name of workman is appearing at Sl.No. 20 annexed with document, his date of birth is shown as 1-1-41. His date of birth was not corrected, rather as per office order dated 25-11-89, Age Determination Committee found correct date of birth of workman as 1-1-1941. Name of workman is appearing at Sl.No.75.

8. Management's witness Surya Prakash Patnaik in his affidavit of evidence supported contentions of management. His evidence in cross-examination shows that he was not member of Age Determination Committee. He joined service of IInd party. Evidence of management's witness is not shattered on the material aspects.

9. Learned counsel for IInd party Shri Shashi has submitted bunch of citations-

In case of State of Tamil Nadu versus T.V.Venugopalan reported in 1994(6) SCC 302 their Lordship held delay in seeking correction of date of birth recorded after entering service and counter signed by

Govt. servant would not be permitted to be challenged by the Govt. servant at the fag end of his service.

Copy of order passed by CAT Jabalpur in Petition No. 18/2000 is produced. Their Lordship observed counsel for respondents also pointed out that record in Form B Register is maintained in accordance with the statutory requirement contained in Section 48 of the Mines Act, 1952 and Rule 77 of the Mines Rules 1955.

Their Lordship on any ground for calling interference w.e.t. petitioners 1, 4 to 7 claim of petitioners No. 2, 3 was forwarded to Headquarters and they were forced to pursue remedy.

In present case, applicant's claim about correction of date of birth was rejected by Age Determination Committee. Workman has not produced documents about his correct date of birth from School record or any authentic record therefore I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of SECL, Banki Colliery, Distt. Bilaspur (MP) in not changing the date of birth of Shri S.C.Haldar, Mechanical Fitter from 1-1-1941 to 1-10-1946 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2534.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 301/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/144/1999-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2534.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 301/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/144/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/301/99****PRESIDING OFFICER : SHRIR.B.PATLE**

General Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
PO Jamuna Colliery,
Distt. Shahdol (MP)Workman/Union

Versus

General Manager,
Jamuna & Kotma Area of SECL,
PO Jamuna Colliery,
Distt. Shahdol (MP)Management

AWARD

Passed on this 27th day of August, 2014

1. As per letter dated 8-9/9/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/144/99-IR(CM-II). The dispute under reference relates to:

“Whether the action of the General Manager, Jamuna and Kotma Area of SECL, PO Jamuna Colliery, Distt. Shahdol MP in not promoting Shri Bihari Lal Pandey, S/o Shri Ram Biswash as Asstt. Foreman vis-à-vis others is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party RKKMS Union submitted statement of claim. Case of Ist party Union is that Shri Bihari Lal Pandey was appointed as General Mazdoor Category I in 1980. He was working as mechanical helper and regularized as such in 1981. Considering his sincere work, workman was promoted as mechanical fitter Category IV in 1983. In 1987, he was promoted as mechanical fitter Category V. On 1-4-1991, he was again promoted as Mechanical Fitter Category VI.

3. It is alleged that Shri S.N.Jha and Lalloo Singh were designated as Welder and were junior to workman Shri Bihari Lal Pandey. They were performing job of Welder upto December 1996. Management issued letter dated 23-12-96 giving notional seniority to Shri S.N.Jha and Lalloo Singh from 1989 as Mechanical Fitter Category VI. They were promoted as Assistant Foreman (T&S Grade C). They were junior to Bihari Lal Pandey who was working in mechanical section since date of his appointment. That on basis of notional seniority given to Shri S.N.Jha, they were promoted as Assistant Foreman. Workman was not considered for promotion. His juniors Shri Lalloo Singh and S.N.Jha were promoted. That notional seniority given

to Shri S.N.Jha and Lalloo Singh was basis for their promotion the post of Assistant Foreman. Workman was deprived with the promotion. That promotion of Shri S.N.Jha and Lalloo Singh is illegal, unjustified. It is prayed that Bihari Lal is entitled for promotion to the post of Asstt. Foreman (T&A) Grade C from the date Shri S.N.Jha and Lalloo Singh were promoted on said post.

4. IInd party filed Written Statement at page 7/1 to 7/2 denying the claim of Ist party workman. IInd party submits that Shri S.N.Jha and Lalloo Singh were designated as Welders. They were actually performing job of mechanical fitter for long time. They have acquired sufficient skills and knowledge in that field. That Shri S.N.Jha and Lalloo Singh are not junior to the workmen. It is reiterated that Shri S.N.Jha and Lalloo Singh were performing job of mechanical fitter though they were designated as Welders. Considering their skill and experience, they were re-designated to Mechanical Fitter Category VI strictly in compliance of practice. In DPC for promotion to the post of Mechanical Fitter Category B-I, they were considered. As per norms of cadre scheme, 47 candidates were eligible for consideration by DPC for post of Assistant Foreman Grade C including workman. There were only 13 vacancies of mechanical discipline, the DPC recommended a panel of 14 persons in which names of Shri Lalloo Singh and S.N.Jha were at Sl No.3 & 9. Name of workman was at Sl.No.28. Therefore he could not be promoted as names of Shri S.N.Jha and Lalloo Singh were above the name of workman in the list. Other allegation of workman are denied.

5. Union filed rejoinder at Page 8/1 to 8/2 reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---|
| (i) Whether the action of the General Manager, Jamuna and Kotma Area of SECL, PO Jamuna Colliery, Distt. Shahdol MP in not promoting Shri Bihari Lal Pandey, S/o Shri Ram Biswash as Asstt. Foreman vis-à-vis others is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to relief claimed by him. |

REASONS

7. The present dispute relates to denial of promotion to workman Shri Bihari Lal Pandey to post of Assistant Foreman. Claim of Union is denied by management. Workman Bihari Lal Pandey filed his affidavit of his

evidence. He has stated about notional seniority given to Shri S.N.Jha and Laloo Singh as per letter dated 23-12-96. To the post of Mechanical Fitter Category VI from 1989. They were given promotion as Assistant foreman (T&S) Grade C as such the workman is rendered junior to them. However management committed illegality in giving notional seniority to Shri S.N.Jha and Laloo Singh. Management should have considered him for promotion as Assistant Foreman (T&S) Grade C in 1996. In his cross-examination workman says he joined as General Mazdoor in 1980. In 1982, he was designated as Category II, in 1984 as Category IV, in 1987 as Category V and in 1991 as Category VI. He was promoted as Assistant Foreman Grade C in 2006. Shri S.N.Jha and Laloo Singh are not junior to him. He was unable to tell on which post Shri S.N.Jha and Laloo Singh were promoted and time of their promotions. That both Shri S.N.Jha and Laloo Singh were appointed as Welder, General Mazdoor. They were not appointed as Welder. He further claims ignorance when they were designated as Welder, he claims ignorance whether work of mechanical fitter was done by them. That both Shri S.N.Jha and Laloo Singh were working in Welder Category VI. He denies that they were working at Mechanical Fitter for several years. For promotion to the post of Foreman Grade-C, he was placed before DPC, the names of Shri S.N.Jha and Laloo Singh were not included. In his further cross-examination, workman says he alongwith Shri S.N.Jha and Laloo Singh for the post of Assistant Foreman Grade C, he claims ignorance whether 14 persons were recommended by DPC. He also claims ignorance whether name of Shri S.N.Jha and Laloo Singh were at Sl.No.3, 9 and his name was at Sl.No.28.

8. Evidence in cross-examination of workman shatters his claim. He has admitted that Shri S.N.Jha and Laloo Singh were not juniors to him.

9. Management's witness Shri S.Parida filed affidavit supporting contentions raised in Written Statement. Management's witness was not cross-examined. Affidavit of evidence is also filed by Shri V.D,Bhide supporting contentions of management in Written Statement. He is also not cross-examined.

10. Considering evidence in cross-examination of workman and unchallenged evidence of management's witnesses, I do not find substance in allegation of Union that workman was superseded by Shri S.N.Jha and Laloo Singh, juniors to him. The documents page 7/3, 7/4 produced by management about recommendation by DPC for post of Assistant Foreman, Mechanical Fitter Grade C. The name of workman is appearing at Sl.No.28. Workman has admitted documents at Page 11/6, 11/7. For reasons discussed above, claim of Ist party workman raised by Union is not justified. Therefore I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under:-

- (1) The action of the General Manager, Jamuna and Kotma Area of SECL, PO Jamuna Colliery, Distt. Shahdol MP in not promoting Shri Bihari Lal Pandey, S/o Shri Ram Biswash as Asstt. Foreman vis-à-vis others is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 5/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/19/1998-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2535.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/19/1998-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/99

PRESIDING OFFICER : SHRIR.B.PATLE

Secretary,
Chhattisgarh Khadan Karkhana
Mazdoor Union, Bankimogra,
Distt. Bilaspur (MP)

.....Workman/Union

Versus

Dy.General Manager,
SECL, Banki Group,
Dhelwadhi Project,
Distt. Bilaspur (MP)

.....Management

AWARD

Passed on this 27th day of August, 2014

1. As per letter dated 27-11-88 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/19/98-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of SECL, Dhelwadih Project (Banki Group) Distt. Bilaspur in not regularizing the worker Shri Shiv Bhagat S/o Uchit, Loading Mate Cat-IV as Loading Clerk Grade-III from the date he was promoted as Loading Mate and not giving further promotion is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Union submitted statement of claim at Page 2/1 to 2/6. Case of Ist party Union is that in Coal Industry, the award passed by Tribunal called Majumdar Award governs grade, designations, categories of the employees in Coal Industry. Workman Shiv Bhagat was employed in loading section on daily wages as Mazdoor Category III from 5-5-1966. He was doing work of loading clerk regularly. Above named workman has failed matriculation in 1965. He was performing duties of clerical nature. SECL Banki Group, Dhelwadih project started in October 1992. The workman was doing work of loading section taking the entries as Loading assistant. Workman was taking entries as way bridge clerk, Loading Inspector. Workman was preparing monthly quarterly annual coal production despatch stock register, statements reports etc. such statements were verified from payments by the workman. On 13-5-93, workman submitted application to Sr. Suptd. Loading Suptd. Shri P.M.Mathai for regularisation as loading clerk. The management vide order dated 31-1-94 allowed designation to the workman as loading mate Category IV Pay 14.18-1.32-16.65 per day. It is also submitted that the workman was promoted in said category. That in coal industry, employee completed 3 years as per cadre scheme is entitled for promotion. The management refused promotion to the workman. After completion of 3 years on 1-1-1997 on the ground that there was no post of loading mate in the cadre scheme. On 1-3-97, workman submitted application for his regularization as loading clerk. Management did not consider said application. On 4-3-97, workman submitted representation to Dy.General Manager requesting proper consideration of representations for his regularization as loading clerk. That as per Coal Wage Board Award 1968, colliery dispute award 1956 and coal wage agreements cadre schemes were introduced. The post of loading mate was not in the cadre scheme. Appendix 16 of colliery disputes award provides designation of store mates, store issue clerks. Coal wage award Appendix VI provides staff grading, store issue clerk, Store Mates Clerk Grade-III.

3. Union further submits ministerial staff loading personnel provides Assistant Loading Clerk Grade III, Sr. Loading Inspector Grade A, promotions for matriculate employees. Workman is denied promotions as per those schemes. He is not regularized as Asstt. Loading Clerk. It is submitted that the cadre scheme for clerk minimum educational qualification is matriculate. Workman was kept in Grade III. As per Cadre Scheme, the employees working as Assistant Loading Clerk are entitled to promotion to the post of Assistant Loading Inspector. Educational qualification is not a bar for promotion to Grade C. On such contentions, Union is praying that workman Shri Shiv Bhagat be allowed promotion as Loading Clerk Grade-III.

4. Management of IInd party filed Written Statement at Page 4/1 to 4/3. Claim of workman is denied. It is submitted that workman Shri Shiv Bhagat was appointed on daily wages from 5-5-66 in Category-I. On 5-2-72, workman had submitted resignation. On appeal of the workman, he was re-appointed on 20-12-72 for a period of 3 months. On 1-7-89, workman was allowed upgradation to Category-IV. On 18-10-98, workman was transferred to Dhelwadih. In other colliery, the workman was doing work in Railway Siding on daily wages. He was doing work of digging through gang. That for clerical post minimum educational qualification is Matriculate/ Higher Secondary. Workman had not passed departmental examination. Only after Higher Secondary Examination, workman cannot work as clerk. It is reiterated that the workman had not passed matriculation. He was never appointed as Assistant Loader Clerk. There was no question of workman doing work of loading clerk at that time. Workman was promoted to Category IV daily wages as loading mate. Workman is not holding required educational qualification. Demand of Union is not justified. workman cannot be allowed benefit of cadre scheme for loading persons. On such contentions, IInd party prays for award in its favour.

5. Union submitted rejoinder at Page 6/1 to 6/2 reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) “Whether the action of the management of SECL, Dhelwadih Project (Banki Group) distt. Bilaspur in not regularizing the worker Shri Shiv Bhagat S/o Uchit, Loading Mate Cat-IV as Loading Clerk Grade-III from the date he was promoted as Loading Mate and not giving further promotion is justified?

(ii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

7. Dispute relates to claim of workman for promotion to post of loading clerk. His claim is denied by management on the ground as per cadre scheme minimum qualification for clerical post is matriculation. Workman is not holding educational qualification for said post. The evidence of workman says that he has failed 11th standard. From 5-5-66, he was working in Banki colliery in loading section as Mazdoor Category-I. that he was doing the work of coal loading transportation in Banki colliery. On 18-10-93, he was transferred to Dhelwadiah. At that time, he was working in Loader Category IV. From 1-1-94, he was designated as mate. He says that he was carrying work of daily work of dispatch register, store register, delivering order taking entries in registers. He is doing similar work till date of his evidence. That he was doing work of Assistant Loading clerk Grade-III. That he would have been promoted as loading clerk Grade-II. In his cross-examination, workman says he was not authorized by any-body for doing clerical work. For post of Asstt. Grade- III, educational qualification of Higher Secondary Examination. For post of clerk Grade-III, minimum 3 years experience in SECL, passing departmental examination is required. That he had not appeared in departmental examination and not passed Higher Secondary Exam. In his further cross-examination, he says that he was working under Mines Suptd. Mr. Gumasta and S.K.Gupta. He was not working under any plan. At the time of his evidence, he was working as loading mate. He was unable to tell when cadre scheme was introduced. That loading mate is daily wager post. Loading clerk is monthly ret'd. post.

8. Management filed affidavit of witness Shri N.K.Sattigeri. Witness of management says Shiv Bhagat was appointed on 15-5-56 in Category-I as daily wager in Banki colliery. He was working as General Mazdoor Category-III on daily wages, he had rendered his resignation on 5-2-72. On appeal submitted by workman, he was allowed re-employment. His service period was extended for 3 months time to time. Workman was transferred to Dhelwadiah Project on 18-10-98. Workman was granted SLU benefit Category -IV on daily wages designated as loading mate. The service conditions of employees in coal industry are governed by NCWA. Workman was never appointed as Assistant Loading clerk. He was not asked to work as loading clerk. Cadre scheme of ministerial staff post are classified as General Clerical cadre, Store Personnel Cadre, Loading Dispatch and Sales cadre, Cash Personnel Cadre, Accounts Cadre and Secretariat Cadre. The evidence of management's witness remains unchallenged. The witness of management was not cross-examined.

9. Considering evidence of workman that not passed matriculation or departmental examination, cadre scheme is produced document Exhibit M-1. For post of clerk Grade-III minimum qualification is matriculation or equivalent from recognized board with 3 years service. Workman donot fulfill requirement of his appointment. Therefore action of denial of promotion to workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of SECL, Dhelwadiah Project (Banki Group) Distt. Bilaspur in not regularizing the worker Shri Shiv Bhagat S/o Uchit, Loading Mate Cat-IV as Loading Clerk Grade-III is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2536.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 174/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/191/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.174/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/191/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/174/99

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Ram Kishan Pal,

Ex. S.S. Attendant,

Nandan Mine No.2, Behind Gram Panc

P.O. Damua, Distt. Chhindwara

Chhindwara

.....Workman

Versus

Manager,
Nandan Mine No. 2 of WCL,
P.O. Damua,
Distt. Chhindwara
Chhindwara (MP)

.....Management

AWARD

Passed on this 27th day of August, 2014

1. As per letter dated 24-4-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/191/98/IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Nandan Mine No. 2 of M/s. WCL, Distt. Chhindwara in dismissing the services of Shri Ram Kishan Pal S/o Shri Darshan Pal S.S. Attendant w.e.f. 15-12-97 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4 to 9. Case of Ist party is that service conditions of the workman of WCL are governed under provisions of NCWA. Charge-sheet was issued to workman on 6-10-97 alleging his absence from duty without sanctioned leave, without reasonable cost for more than 10 days. Management alleged misconduct under clause 26:24 of the standing orders related to habitual late attendance, habitual absence from duty without sufficient cause. Clause 26:30 of standing orders relate to absence from duty without sanctioned leave. That the allegation of habitual absence from duty have not been framed in the chargesheet as per clause 26.24 of standing orders. That workman replied to chargesheet denying charges against him. The Manager having rigid view and implicated him falsely. Enquiry officer S.S.Soda was appointed. Enquiry officer is the Asstt. Manager of Nandan Mine No.2 and was controlling Authority of the workman.

3. Workman further submits that he attended duty on 19-7-97. His attendance was marked. However one Fitter Shri Ganga caught him and pushed into the rest room of the overman. He threatened him and abused in filthy language. One shri Dinaker Pathak also threatened to the applicant workman and asked him why he had come on duty. Workman was threatened to be killed, he filed complaint to the Manager for securing his safety. Management did not care of his complaint. It is further alleged that Gangaram, Hassan Gul Mohammad and Dinaker Pathak has gone to his house with iron rod and stick to attempt upon him but his neighbours and his family members saved him. Workman had filed complaint to JMX under Section 420/467 of IPC. Workman has further alleged that enquiry was not properly conducted. Documents were

not produced about his absence. Enquiry conducted against him was not fair. The witnesses were not allowed to be cross-examined. He was not issued show cause notice. Report of enquiry was not received by him. Enquiry is vitiated. Workman submitted appeal on 26-12-97 as per Clause 30 of the certified standing order. His appeal was turned down by Appellate Authority in breach of natural justice. That management had not adduced any document in Enquiry Proceedings. Any material evidence was not produced before Enquiry officer. Said charges against him were not substantiated by evidence. On such ground workman submits charges against him are not proved. The order of dismissal imposed against him is illegal. Workman prays for his reinstatement.

4. IInd party filed Written Statement at page 16 to 25. Relief prayed by workman are denied. It is submitted that workman was not supposed to be absent without permission. Workman remained absent without intimation or sanctioned leave. Workman was continuously absent without sanctioned leave from 20-7-97 till day of issuing charge-sheet 6-10-97. Standing orders are applicable. Period of absence from duty is shown in para-3 of the statement of claim. The reply submitted by workman was not found satisfactory. Shri Soda was appointed as Enquiry Officer, Shri S.N. Rana was appointed as Management's Representative. Memo about appointment of Enquiry Officer was sent to workman on 21-10-97. Enquiry was held on 21-10-97, 1-11-97. Workman filed application for adjournment. When enquiry was fixed on 4-11-97, workman and his co-worker Sunder Das were present on that day. The charges were explained to the workman. He denied charges against him. Workman had requested for production of documents- attendance register etc. Management's witnesses were cross-examined by co-worker. Enquiry conducted against workman is proper and legal. Workman was habitual absentee. He remained absent from duty without reasons, without application for leave. IInd party has referred to ratio held in various cases. All the contentions of workman about denial of opportunity have been denied. The charges against workman are proved from evidence. Considering proved charges of unauthorized absence, workman was terminated. Termination of his service is legal. IInd party prays for award in its favour.

5. Workman filed rejoinder at page 53 to 55 reiterating its contentions in statement of claim.

6. As per order dated 14-6-2012, my predecessor found enquiry conducted against workman is not legal and valid. Management was allowed to prove misconduct in Court. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---|
| (i) Whether the charges of unauthorised absence, habitual absence alleged under clause 26.24, 26.30 against workman are proved by the management of IInd party? | Only charge under clause 26.30 is proved. |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (iii) If so, to what relief the workman is entitled to? | As per final order |

REASONS

7. Enquiry conducted against workman is found vitiated by my predecessor. IInd party management has been permitted to prove misconduct in Court. Management filed affidavit of evidence of its witness Shri Sunil Kumar Jain working as Sr. Manager. Management's witness in his evidence says that chargesheet was issued to workman related to continuous absence from duty without sanctioned leave or sufficient cause. The domestic enquiry was ordered. Shri Soda was appointed as Enquiry officer and S.N. Rana as Management Representative. Workman participated in enquiry. The findings of enquiry was submitted to Competent Authority. Punishment was awarded by competent authority. The evidence of management's witness is devoted about chargesheet issued to workman and enquiry conducted against him, the findings of Enquiry officer. The management's witness in his cross-examination says that he doesnot know workman personally. He has not issued notice to the workman about his habitual absence. He was unable to say whether said register and attendance register are produced before Enquiry officer Shri Soda. He claims ignorance whether Ist party workman has filed criminal case against Enquiry officer before chargesheet issued to workman. Witness claims ignorance whether notice was issued to workman before issuing chargesheet about his unauthorised absence. Thus entire evidence of workman is devoted about enquiry conducted against workman. His evidence is absolutely silent about period of absence of workman from duty, whether the workman had not submitted application for leave, what was the period of unauthorised absence of workman. Thus chargesheet issued to workman document M-1 spells about misconduct alleged against workman under Clause 26.24- habitual unauthorized absence from duty without sufficient reasons. Clause 26.30 absence from duty without sanctioned leave for more than 10 days. The evidence of management's witness is absolutely silent on above charges. The legal position is shattered that when enquiry is vitiated, the evidence in Enquiry Proceeding cannot be considered. The management has to prove misconduct adducing evidence as promotion was already granted.

8. Workman has filed affidavit of his evidence contending that his explanation was not called by

management at any time. That on 11-10-97, workman was threatened to be killed by Gangaram. He had filed complaint against Shri Sonwanshi Manager for offence under Section 420 IPC. Thereafter the Manager issued chargesheet against him. That he was unable to give education to his children. In his cross-examination, he says he received charge Exhibit M-1. He submitted reply to chargesheet Exhibit M-3. He admit that he was absent from duty from 27-7-97 to 6-10-97. He had not submitted application for leave. He sent telegram about his absence. That in telegram he had not applied for leave. He had not received communication that his leave was sanctioned or he shouldnot attend case. He had not produced documents about criminal case filed against Fitter Gangaram. He denies that he not submitted report to police. In cross-examination of workman, he has admitted his absence from duty, leave application was not submitted. No copy of telegram sent to office is produced at Exhibit W-6.

9. Though management has not adduced evidence about the charges against workman from evidence in his cross-examination charge under Clause 26.30 of unauthorised absence for more than 10 days is established. The evidence of management's witness doesnot disclose absence of workman. Therefore charge about habitual absence under clause 26.24 cannot be proved and charge under Clause 26.30 is proved against workman. For above reasons, I record my finding in Point No.1. charge only under clause 26.30 is proved, charge under clause 26.24 is not proved.

10. Point No.2- In view of my finding in Point No.1 that charge under Clause 26.24 is not proved against workman, question arises whether the workman is entitled for reinstatement with back wages. Learned counsel for workman has submitted written notes of argument and bunch of citations.

In case of Krusnakant B.Parmar versus Union of India and another reported in 2012(3) Supreme Court Cases 178, their Lordship held misconduct of unauthorized absence from duty, willful absence for sustaining such allegations it must be proved that unauthorized absence was willful. If the absence is due to compelling circumstances under which it is not possible to report for on perform duty such absence cannot be held to be willful and employee guilty of misconduct.

In present case, workman in his cross-examination stated that he had sent telegram, application for leave was not submitted. At the same time management's evidence is silent about previous absence of workman. Therefore charge under Clause 26.30 only proved from evidence in record.

11. On the point of illegal termination and back wages, reliance is placed by learned counsel for workman Shri R.S.Verma on ratio held in Case of Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya

and others reported in 2013(10)SSC-324. Their Lordship allowed full back wages on reinstatement on ground that appellant had not proved factum of non-employment.

The facts of present case are not comparable therefore ratio in above cited case cannot be applied to case at hand.

12. Learned counsel for IInd party Shri A.K. Shashi on the point of reinstatement, back wages relies on ratio held in case of J.K. Synthetics Ltd. versus K.P. Agrawal and another reported in 2007(2) SCC 433. Their Lordship held in cases of misconduct, reinstatement. Court is not holding that employer was in wrong or that dismissal was illegal or invalid. Court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. There is no automatic reinstatement and nor is it automatically retrospective. If reinstatement is directed, it is a consequential direction on a finding that punishment is excessive.

In present case, chargeheet was issued to workman Exhibit M-1 on 6-10-97. As per evidence of workman during cross-examination sys he was absent from duty from 20-7-97 till 6-10-97 i.e. about 2 ½ months. Therefore punishment of dismissal from service for absence of 2 ½ months without sanctioned leave would not be appropriate.

Shri A.K. Shashi further relied on ratio held in case of Kendriya Vidyalaya Sangathan and another versus Shri S.C.Sharma reported in 2005-II-LLJ-153. Their Lordship held against a concurrent adverse verdict by the Central Administrative Tribunal and the High Court, appellant Kendriya Vidyalaya tried in this appeal to justify its action in terminating the service of the respondent Principal, but to no avail. The Supreme Court upheld the said verdict. It observed the appellant had not recorded a finding before applying Rule 19(ii) of Central Civil Service Rules 1965, that it was not reasonably practicable to hold the inquiry proceedings. Such a findings was a basic requirement for application of Rule 19(ii) in the background of Rule 14 of the said rules, the Supreme Court observed.

In para-16 of the judgment their Lordship setaside that part of the impugned order which granted the respondent back wages. It observed the respondent had neither pleaded nor placed any material to show that he was not gainfully employed. It pointed out that the initial burden was on the employee to prove the above fact. The Supreme Court added that it had not expressed any opinion on the merits of the case or on the entitlement of respondent to service benefits.

In present case, charge under Clause 26.30 about unauthorized absence for more than 10 days is proved. The dismissal from service for absence of such period would not be appropriate. In my considered view, punishment of withholding two increments of workman with cumulative effect would be appropriate. The punishment of dismissal of workman is excessive and

deserves to be quashed. On the point of back wages, the evidence adduced by parties is not cogent whether workman was unemployed or he was in gainful employment after dismissal. Under such facts, reinstatement of workman with 50 % back wages would be proper. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management of Nandan Mine No.2 of M/S WCL, Distt. Chhindwara in dismissing the services of Shri Ram Kishan Pal S/o Shri Darshan Pal S.S. Attendant w.e.f. 15-12-97 is not proper and legal.
- (2) Order of dismissal of workman is set-aside. For proved charge of unauthorized absence against workman under clause 26.30. punishment of withholding two increments with cumulative effect is imposed. IInd party is directed to reinstate workman with 50 % back wages with continuity of service.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2537.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 194/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/121/1997-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2537.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 194/98) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 12-09-2014.

[No. L-22012/121/1997-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/194/98

PRESIDING OFFICER : SHRIR.B.PATLE

Secretary,
M.P. Koyla Mazdoor Sabha (HMS),
Po Haldibadi,
Distt. Surguja (MP)Workman/Union

Versus

Chief General Manager,
Chirimiri Area of SECL,
Post West Chirimiri Colliery,
Distt. Surguja (MP)Management

AWARD

Passed on this 22nd day of August, 2014

1. As per letter dated 19-8-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/121/97/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, Chirimiri area of SECL in not promoting Shri Goverdhan Sharma, Mining Sirdar, NCPH colliery to the post of safety-cum-production Asstt. and superceding him by promoting his juniors is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 4/1 to 4/7. Case of workman is that he is employed as Safety-cum-Production Assistant in new Chirimiri Hills Colliery of SECL. He was initially appointed on 28-12-65. His service record was excellent. He was promoted as Mining Sirdar on 26-6-77. His name was at sl.No.44 in gradation list. That he is Trade Union Activist since date of his appointment. He was elected as office bearer, Secretary, Vice President, President of HMS Union. As office bearer of the Union, he submitted various demands. He had raised several demands for facilitating the workers. The management was annoyed with him. He was denied timely promotions by management because of his Union activities. It amounts to unfair labour practice.

3. Workman further submits that during whole career, he had not received any warnings/CRs. He tired to cooperate with the management. That service conditions of employees are covered by NCWA from time to time. That as per cadre scheme. Next promotion after mining Sirdar is to the post of Safety Cum Production Assistant. Required conditions for said promotion are – (i) Mining Sirdar Certificate of competency issued by DGMS, (ii) Gas Testing Certificate. That the workman possessed required qualifications and minimum experience of 10 years as Mining Sirdar. He was denied promotion on

22-12-93 when 13 persons were promoted as Safety-cum-Production Assistant. He was not considered for promotion to said post when Pradeep Kumar Saha Junior to him was promoted. Shri S.V.R.Raju was promoted on 22-12-93. Shri S.V.R.Raju was not having 10 years experience as Mining Sirdar. It is submitted that because of his Union activities, workman was denied promotion to the post of Safety-cum-Production Assistant during 1993, 95. He was given promotion on 21-3-98. Workman claims promotion to the post of Safety-cum-Production Assistant from 1993 when his juniors were promoted.

4. IInd party filed Written Statement at Page 7/1 to 7/9. IInd party denied claim of workman. Accordingly to the IInd party, the promotional channels for various categories are provided. Promotions are based on qualifications, experience and selection by DPC. The selection of candidates for filling vacancies in higher categories is made on recommendation of DPC constituted by Competent Authority. The final panel prepared by DPC may be made known to the concerned personas after DPC has found them suitable. There is cadre scheme for mining supervisory employees which starts from T&S Grade C. that workman was initially appointed in 1965. He was given promotion from time to time. Workman was promoted as Safety-cum-Production Assistant on 31-3-98 after recommendation by DPC. Workman was not found suitable in 1993, 1995 as his CR were adverse. Workman was found disqualified as his CR was average. The Committee after assessment of each and every 123 candidates, candidates securing marks 40 and above only 3 candidates were promoted at the time of DPC held on 20-4-94, 182 mining sirdars who have completed 7 years service were considered for promotion. Name of workman was at Sl.No. 35. He could not be promoted. In DPC held on 1-3-95, workman was considered merit list of Mining Sirdar of Chirimiri Area for the promotion to the post of Safety Cum Production Assistant, name of workman was at Sl. No. 23. The Committee finally recommended panel for period of one year for promotion to the post of Safety Cum Production Assistant, out of which 22 candidates may be promoted and remaining candidates may be kept in panel for one year. Promotions are given on recommendation of DPC subject to vacancies. Workman was promoted on 23-3-98 to the post of Safety-cum-Production Assistant in Pay Scale 2064-119-4040.

5. IInd party further submits that workman was issued charge sheet on 18-6-90. Another charge sheet was issued to him on 23-3-93. On 14-12-94, punishment of stoppage of increment was imposed against workman. Workman was also issued warning letter on 12-5-00. Charge sheet is issued to workman on 9-11-2000. Showcause notice is issued to him on 12-12-00, 13-3-01. The service record of workman is not clean. IInd party submits that promotions were given as per cadre scheme on

recommendation by DPC. Reference be answered in favour of the management.

6. Workman has filed rejoinder at Page 8/1 to 8/7 reiterating his contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the action of the Chief General Manager, Chirimiri area of SECL in not promoting Shri Goverdhan Sharma, Mining Sirdar, NCPH colliery to the post of safety-cum-production Asstt. and superseding him by promoting his juniors is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

8. Present reference pertains to denial of promotion to the workman to the post of Safety-cum-Production Assistant in 1993, 95 when his juniors were promoted. IInd party denied material contentions of workman. Affidavit of his evidence is filed by workman supporting his contention in statement of claim that he was initially appointed on 28-12-1965. He was promoted as Mining Sirdar on 26-6-77. That he was elected as office bearer, Vice President and President of HNS Union. In said capacity he had submitted various demands for employees. Management was annoyed from him. Promotions of employees are required to be made as per cadre scheme. For coal mining staff, the cadre scheme provides promotion of Mining Sirdar to Safety Cum Production Assistant. It is necessary that for promotion, employee should hold mining sirdar certificate of competency issued by DGMS and Gas Testing Certificate. That departmental candidates should possess minimum 10 years working experience as Mining Sirdar. That on 22-12-93, 13 Mining Sirdars were promoted. Shri Pradeep Kumar Saha was junior to him, his name was at Sl. No. 57 of the Gradation list. On 5-8-85, Shri S.V.R.Raju was promoted to the post of Short Firer cum Mining Sirdar. That he has not completed 10 years service overlooking cadre scheme Raju was promoted on December 1993. Workman was superseded both the times. He was promoted in 1998 on recommendation by DPC. In his cross-examination, workman says that he raised dispute for Grade B. he knows that for promotion, recommendation by DPC is necessary. Only seniority is not basis for promotion. 10 years experience as Mining

Sirdar and Competency Certificate is basis for promotion to Safety Assistant. On admission by workman circular is marked as Exhibit M-1. Workman denies that cadre scheme was not violated by DPC. Documents referred to witness are marked as Exhibit M-10, 10-a,b,c. workman is admitting that promotions are required to be made by recommendation by DPC. Management's witness T. Samuel is supporting contentions of management in Written Statement. That workman was found disqualified as his CRs are average along with 19 other candidates. That Committee after assessment of each and every candidate only 123 candidates has served qualifying 40 marks and above. Only 3 candidates were to be promoted. Panel of 50 candidates who secured 50 marks is recommended. That he was working as Sr. personnel Officer during the period of DPC i.e. 1-3-1995. He was given details why workman was not selected in 1993, 1995. Workman was selected by DPC in 1998. In his cross-examination, management's witness says that he was member of DPC in 1995. He was posted at Chirimiri from 1998 to 2003. The report of DPC dated 1-3-95 is produced at Exhibit M-2(b). Workman was promoted as per list Exhibit M-2(c). Management's witness was not cross-examined. His evidence remained unchallenged. In evidence discussed above, workman has admitted promotions as per cadre scheme by recommendations by DPC. His name was not recommended in 1993, 95, therefore the allegation of supersession by workman cannot be accepted. For above reasons, I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the Chief General Manager, Chirimiri area of SECL in not promoting Shri Goverdhan Sharma, Mining Sirdar, NCPH colliery to the post of Safety-cum-Production Asstt. and superseding him by promoting his juniors is proper and legal.
- (2) Workman is not entitled to any relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 262/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/470/1996-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2538.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 262/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/470/1996-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/262/97

PRESIDING OFFICER : SHRIR.B.PATLE

Secretary,
M.P.K.M.S(HMS),
West Chirimiri Colliery,
Post West Chirimiri Colliery,
Distt. Surguja

.....Workman/Union

Versus

Sub Area Manager,
West Chirimiri Colliery of WCL,
Post West Chirimiri Colliery,
Distt. Surguja (MP)

.....Management

AWARD

Passed on this 28th day of August 2014

1. As per letter dated 29-8/3-9/97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-22012/470/96-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of West Chirimiri Colliery of SECL in dismissing Smt. Lakshminiya Ct-I Mazdoor from services w.e.f. 15/19-6-96 is legal and justified? If not, to what relief is the worker entitled and from which date?”

2. After receiving reference, notices were issued to the oparties. Workman filed statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that she is widow. She was working in North Colliery of SECL Chirimiri area. She couldnot attend service from 1989 to 1992 as she was mentally disturbed. She was regularly receiving treatment after death of her husband. That her children have become dependent on her. She was travelling from North Chirimiri Colliery to West Chirimiri Colliery.

Transfer letter was not given to her. She was roaming place to place. Without any kind of investigation, her services were terminated. That Mr. S.N.Sen not conducted proper investigation. Principles of natural justice were not followed. Order of her termination be quashed.

3. IInd party filed written Statement. It is submitted by IInd party that Ist party workman was working as General Mazdoor Category-I in North Chirimiri Colliery. As per order dated 9-10-89, she was transferred to west Chirimiri. She was relieved on 21-8-89. The order was served on her. Workman reported on duty on 21-8-89. Workman despite of her transfer did not report to duty. As per records maintained in West Chirimiri Colliery, she was absent without intimation or sanctioned leave. Charge-sheet was issued on 21-3-95 for her unauthorized absence as per clause 26.30 of standing orders. Enquiry was conducted against workman by Shri A.M.Sen, Sr. personnel officer, M.N.Das Sr. manager was the management's representative. Enquiry Officer read over charges to workman. She admitted charges after fully understanding the same. Documents were produced. Enquiry officer recorded statements of witnesses. The co-worker did not cross-examined witnesses of the management. No defence evidence was adduced by workman. Enquiry was conducted properly. After considering report of Enquiry officer, the punishment of dismissal was imposed against workman. Rest of all contentions of workman are denied by IInd party. It is reiterated that enquiry conducted against workman was proper following principles of natural justice.

4. As per order dated 29-1-2012, enquiry conducted against workman was found legal. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the charges against workman are proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is legal and proper? | In Affirmative |
| (iii) If not, to what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

5. As stated above, enquiry conducted against workman is found proper and legal. From evidence of management's witness, documents of enquiry are proved and marked Exhibit M-1/1 to 1/8. As enquiry conducted against workman is found legal, the evidence in Enquiry proceedings needs to be considered for deciding whether

the charges against workman are proved. Record of Enquiry proceedings Page 7 shows that workman Laxminiya was transferred to West Chirimiri Colliery, she was relieved on transfer order dated 21-8-89. As per statement of Shri Vinod Pathak clerk, name of workman was not recorded in Form B register. As per statement of Shri Choudhary, any record was not available w.r.t. workman in West Chirimiri Colliery. Management's Representative stated that after workman was relieved on 21-8-99, she was absent from duties. Thus statement of workman was recorded at Page 9 of the Enquiry proceedings. Workman claimed that she was not knowing about order of her transfer to West Chirimiri Colliery. However in cross-examination of management's representative, Ist party workman says in 1992, when she attended for duty, she had come to know about her transfer to West Chirimiri Colliery. Thus the defence of Ist party workman is shattered in her cross-examination. The evidence in Enquiry proceedings proves charges of unauthorized absence from duty. For above reasons, I record my finding in Point No.1 in Affirmative.

6. Workman is dismissed for proved charges of unauthorized absence. She was transferred from North Chirimiri Colliery to West Chirimiri Colliery on 9-10-89. She remained absent from duty for quite long period. In her statement of claim, workman has pleaded that she was mentally upset. She couldnot attend duty after death of her husband. Such excuses cannot be allowed. Considering long absence from duties, punishment of dismissal imposed against workman cannot be said exorbitant or excessive. Accordingly I record my finding in Point No. 2.

7. In the result, award is passed as under:-

- (1) The action of the management of West Chirimiri Colliery of SECL in dismissing Smt. Lakshminiya Ct-I Mazdoor from services w.e.f. 15/19-6-96 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2539.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 199/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/218/1995-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2539.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 199/1996) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/218/1995-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/199/96

PRESIDING OFFICER : SHRI R. B. PATLE

General Secretary,

M.P. Koyla Mazdoor Sabha (HMS),

Post South Jhagrakhand Colliery,

Distt. Surguja (MP)

.....Workman/Union

Versus

General Manager,

Hasdeo Area of SECL,

Post South Jhagrakhand Colliery,

(MP)

.....Management

AWARD

Passed on this 26th day of August, 2014

1. As per letter dated 18-10-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/218/95-IR(C-II) The dispute under reference relates to:

“Whether the action of the management of Hasdeo Area of SECL in not regularizing the workers engaged in different jobs of the stores of Hasdeo Area situated at Bijuri is legal and justified? If not, what relief the workmen concerned are entitled to?”

2. After receiving reference, notices were issued to the parties. Union submitted statement of claim at Page 7 to 23. Case of 1st party workman is that Shri Gaushankar and 11 others were working in Regional Store of Hasdeo Area since 1987. Previously it was situated at North Jhagrakhand Colliery. The Union raised dispute regarding regularization of their services before ALC, Shahdol. Vide letter dated 25-5-95, ALC Shahdol submitted failure report to the Ministry, Govt. of India. Government declined to make reference. Union filed

miscellaneous petition before Hon'ble High Court. Hon'ble High Court quashed order dated 17-4-96 of the Govt. of India. In pursuance of directions received by Hon'ble High Court, dispute is referred.

3. Union further submits that Gaushankar and 11 others shown in the list were working in Central Store of Hasdeo Area at Bijuri. Previously the centre store was at North Jhagrakhand. That workers have been engaged directly by the management and controlling officer of the store. Their attendance was marked at Store by Competent Authority personnel of the management of Hasdeo Area. The job done by these workers was of regular in nature i.e. permanent and perennial in nature. Union also contents that besides those 11 workers, other 4 workmen namely Lallu, Dhanshyam, Uttam Kumar and Dashru also handed over their applications with affidavit to Union for raising dispute on their behalf. It is submitted that work of those persons is part and parcel of the industry, i.e. integral part of the industry defined under Section 2(j) of I.D.Act. The relevant provisions are reproduced by Union. That as per Section 48 of Mines Act and Rule 78, management is required to mark their attendance in statutory record by the company. The matter is further verified as per circular document W-5. That the service conditions of workman employed in coal mine industry are governed by Central Coal Wage Board 1967 after nationalization of Coal Mines in 1973. The wage structure and service conditions are regulated by NCWA raised between management and Union Bipartite Committee. That those agreements accepted by Govt. of India binding on management and workers. That as per NCWA no contract workers can be engaged in any coal mines on work of regular permanent nature. Clause 11.5.0 of NCWA is reproduced.

4. Union further submits that all workers were continuously working since 1987. They have completed 240 days attendance during every year. It is submitted that those workers are in continuous service. Their attendance-cum-payment sheet has been certified by the management personnels. The work performed by workers is of SECL. All materials belong to the management. The officials of SECL have direct control over their workers. The workers have worked for profit and business of SECL and depending for their livelihood on SECL. That nature of work performed by workmen is similar to the work performed by the regular workers of SECL in certain stores and other areas of the collieries. In other areas, similar work done by regular workers are getting wages of Category-I. the work done by those workers is similar to the regular workers. They are entitled to wages of Category I.

5. Management has engaged similar type of workers on previous occasion in Regional Store and stores of Ramnagar and Jhimar Colliery. After demand of Union,

services of workman were regularized on company roll. The settlement in Form A is entered between Union and management have relied. It is alleged that Govt. of India undertaking SECL which is subsidiary of Coal India Ltd. indulged in unfair labour practices by denying rightful wages and other benefits of these workers engaged in permanent, perennial and regular nature of job. The management of SECL has adopted discriminatory attitude engaging those workmen through contractor is illegal, unjustified against the law laid down by Hon'ble High Court. That the employment of contract labour is pending by the Apex Court. The ratio held in AIR 1990 SC-532 is reproduced. It is further submitted that services of those workers are terminated during pendency of dispute before appropriate Govt. without obtaining permission required by law. That workmen have completed 190 days, 240 days service are deemed in continuous service as per Section 25 B of I.D.Act. That their services are terminated in violation of Section 25-F, N of I.D.Act is illegal. That the work done by those workers is of permanent nature. The regular employees doing similar work are paid wages of Cat-I. The Union has reiterated that services of those workmen are terminated in violation of Section 25-F of I.D.Act. That those workers have been engaged by management of SECL only to deny legitimate right and proper wages. Those workers have been engaged by management of SECL through intermediary who has no role over the supervision, financial and administrative control over the workers, the intermediary so called contractor is a ghost and smoke screen, the contract is sham. That the workers are entitled to receive wages of Cat-I. That the coal industry is not an industry as per Section 2(j) of I.D.Act. On such ground, Union is praying for regularization of those workers.

6. IInd party management filed Written Statement at Page 59 to 65. IInd party has denied claim for regularization of those workers. It was not disputed that SECL is Govt. of India undertaking registered under Company's Act. It is submitted that Regional stores Bijuri against various supply orders, the consignments arrived through rail/road are unloaded and stored/stacked from time to time for use for issue. The job of unloading and storing/stacking is irregular and uncertain depending upon the arrival of consignments through rail/road. Taking into consideration of the fact that the work is neither permanent, perennial in nature, it is not necessary to deploy regular band of workers for the said job. That IInd party therefore issued work order in favour of Shri Shubhkaran Bhura by following the laid down tendering process. Copies of NIT as well as work order Rate contract so issued Exhibit M-1, M-2 are referred. That as per Exhibit M-2, it can be observed that work is classified and rates are prescribed for unloading and stacking of different stores. That the rate contract/work order that the contractor has to arrange the unloading

and stacking/ storing of the material as and when the rails/ trucks with consignment meant for Regional Stores, Bijuri is received.

7. It is submitted that the contractor is not expected to deploy the workers for executing the work when there is no stores. Only on receipt of the stores by means of rail/ road there is necessity of unloading and stacking/storing of materials. Once the stores so arrived through rails/trucks are unloaded and stored/stacked rate contract work order is ineffective till arrival of fresh consignment. It is contemplated under work order, rate contemplated is not perennial in nature neither there is any scope for Non-applicant to directly supervise or mark attendance of worker assigned by contractor. That the Central Govt. had initially refused to refer the dispute for the above reasons. It is submitted that the Union may be directed to resort remedy available to it. That present dispute be decided only to the extent of reference made by the appropriate government. The nature of work for which work order was issued and executed is not prohibited. The definition of mine provided under Mines Act is not disputed. The applicability of said provision is contradicted. That the provisions quoted are applicable only to the employees directly engaged by management of IInd party. That the claimants were not directly engaged by management of IInd party. The provisions of Mines Act referred in statement of claim is calculated attempt to misguide the Hon'ble Tribunal. It is reiterated that provisions of Mines Act and rules thereunder are applicable to the employee directly engaged by IInd party after following prescribed rules and regulations. That the claims were not engaged by IInd party directly or otherwise in any prohibited nature of job. There is no employer employee relationship. The provisions of Mines Act are not applicable to the present matter. That the work which was awarded to contractor was irregular and uncertain owing to the reason that work was not permanent or perennial in nature. There was not question of completing 240 days continuous service by the workman. That IInd party after awarding work order did not have control over contract labours. Non-applicant did not issue the labour contract to the contractor. Once a work order of the work not prohibited in nature was issued to the contractor, only contractor alone have control over the workers. That minimum wages applicable to the workers were paid. The workers were not directly engaged by IInd party for performing job of permanent nature. Workers were engaged through contractor. The settlements referred by Union in year 1984 & 89 were entered in peculiar circumstances. It can be treated as precedent. In Regional Store Bijuri, since the work performed is irregular and uncertain, the IInd party doesnot require permanent labours. On such grounds, IInd party prays that reference be answered in its favour and against the Union.

8. Ist party Union filed rejoinder reiterating its contentions in statement of claim at Page 81 to 91. It is further contented that as per Section 48(4) of Mines Act Rule 78, management is required to maintain statutory record about attendance of workers engaged in mine. As per Section 2(1)(j) of Mines Act, the workers are covered under Mines Act. That IInd party is not Scheduled industry. Provisions of MW Act are not applicable to it. The workers have been engaged for 9 years regularly for specific job or entitled to notice for termination. Termination of service without notice amount to retrenchment.

9. IInd party filed rejoinder at Page 165 to 173 denying claim for regularization of the employees. That IInd party has not engaged any permanent employee prohibited by perennial nature denying all other material contentions raised in rejoinder.

10. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether it is proved that Gauri-shankar and 11 other workers shown in the list along with reference are workers of IInd party management of SECL and the contract about their engagement is sham and bogus? | In Affirmative |
| (ii) Whether the action of the management of Hasdeo Area of SECL in not regularizing the workers engaged in different jobs of the stores of Hasdeo Area situated at Bijuri is legal and justified? | In Affirmative |
| (iii) If so, to what relief the workman is entitled to?" | As per final order. |

REASONS

11. At the time of argument, learned counsel for IInd party Shri A. K. Shashi submitted that order of reference relates to the action of the management in not regularizing the workers engaged in different jobs of the stores of Hasdeo Area situated at Bijuri is legal and justified. The reference order doesnot relate to the illegal termination of those workmen. Therefore said aspect cannot be decided by the Tribunal. Union Representative Mr. Pandey in his oral argument and written notes emphasized that the order of reference is loosely worded. The dispute between parties needs to be decided considering the pleadings of respective parties. The parties are in dispute about the status of those employees whether they are the employees of Principal Employer i.e. IInd party or employees engaged through contractor, whether the contract is sham and bogus.

12. Learned counsel for IInd party Shri A. K. Shashi on above point relies on ratio held in

Case of Pottery Mazdoor Panchayat versus Perfect Pottery Company reported in AIR 1979-SC-1356. Their Lordship held the jurisdiction of Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and to matters incidental thereto and the Tribunal cannot go beyond the terms of reference. Where the very terms of references showed that the point in dispute between the parties was not the fact of closure of its business by the employers and the references were limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was infact closed down by the management.

On the above point, Union Representative Shri N. L. Pandey relies on ratio held in :

Case of General Manager, Oil and Natural Gas Commission, Silchar versus Oil and Natural Gas Commission Contractual Workers Union reported in 2008(12)SSC-275. Their lordship in Para-18 of his judgment observed there are several observations which do suggest that a workman who has put in 240 days or is a contractual worker, is not entitled automatically to regularization. We, however, believe that the present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill worded reference. After considering ratio held in various cases in Para-24 their Lordship observed in our opinion the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the I.D. Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else.

In para-1 of the statement of claim filed by Union, it is pleaded that Gaushankar and 11 others were working in Regional Store, Hasdeo since 1987. In Para-2 it is pleaded

that workers have been engaged directly by management and Controlling Officer of the store. Their attendance have been marked at Store by Competent Statutory Personnel of the management of Hasdeo Area. In para-6, it is pleaded that 11.5 of NCWA V provided industry shall not employ labour through contractor or engage contractor's labour on jobs of permanent and perennial nature. In para-14, it is pleaded that services of those workers have been terminated during pendency of reference before appropriate Government without permission in violation of Section 25-F, N of I.D. Act. In para 14(v) it is pleaded that workers have been engaged by the management of SECL through contractors only to deny their legitimate right and proper wages. All those contentions are denied by IInd party having knowledge of those pleadings both parties have adduced evidence. Management has adduced evidence about workers engaged through contractor. Documents produced in that regard. Considering ratio held in 2008(12)SSC-275, the controversy between parties what was the status of the workers needs to be decided. It cannot be said that reference is simpliciter for regularization of workers as appearing in reference order.

13. My attention was also drawn to provisions under Section 48 of Mines Act, 1958 which provides for every mine there shall be a prescribed register of all persons employed in the mine. Rule 78 is clear that registers required by Sub-section 4 of Section 48 of persons employed in mine below ground in open case and above ground are required to be maintained in Form C, D, E.

14. The controversy about what was the status of Gaushankar and 11 others needs to be decided considering oral and documentary evidence adduced by parties. At time of argument advanced on behalf of both parties, it was clear that any licence of contractor is not produced on record for the period 1987 to 1994. Though the registration certificate of the establishment of IInd party were called by Ist party Union, the same have not been produced.

Section 7 of the Contract Labour (R&A) Act, 1970 provide each principal employer of establishment to which the act applies etc. make application to the registering officer in the prescribed manner for registration of establishment. The commentary of Contract Labour (R&A) Act, 1970 by Shri Kharbanda 7th Revised Edition 2011 at Page 284, 285 elaborated the legal position that up to 2-12-1980, the corporation do not have certificate of registration which permitted it under the Act to employ contract labour. On this fact alone, it can be established without going to the question whether the contractor had a valid licence that the employment of contract labour was not regularized as required under the Act. In the circumstances, the workmen employed by VTC up to 1980 could legitimately claim that they are the workmen of the corporation. In

Note-6, legal position is elaborated. The certificate of registration is required to be obtained by the Principal Employer, issued by the appropriate Government under the provisions of Section 7 of the Act. The licence is to be obtained by the contractor under the provisions of Section 12 of the Act. The workmen can be employed as contract labour only through licenced contractors. Unless both these conditions are complied with, the provisions of the Contract Labour (R&A) Act 1970 would not be attracted. Both these conditions are required to be fulfilled, if one wishes to avail the provisions of the Contract Labour (R&A) Act 1970 would not be attracted.

On above point, learned counsel for IInd party Shri A.K. Shashi relies in ratio held in :

Case of General Manager (OSD) Bengal Nagpur Cotton Mills Rajnandgaon versus Bharat Lal and another reported in 2011(1) SSC 635. Their Lordship observed that it is now well settled that if industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was infact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well recognized tests to find out whether the contract labourers are the direct employees of the principal employer are (i) whether the principal employer pays the salary instead of the contractor and (ii) whether the Principal Employer controls and supervises the work of the employee.

Reliance is also placed in case of Air Ports Authority of India, Mumbai versus Indian Airport Kamgar Union and others reported in 2011-I-LLJ-211. Their Lordship dealing with point of sham character of contract held the award allowing reference and directing contract labourers to be treated as permanent employee and directing contract labourers to be treated as permanent employees. Award held not sustainable as it proceeded on wrong premise that said labourers workmen under I.D.Act.

The ratio held in above cited case is not helpful to decide the controversy between parties.

In case of International Airport Authority of India versus International Air Cargo Workers Union and another reported in 2009(13) SCC-374 relied by Shri A.K.Shashi. their Lordship of the Apex Court held whether direction and control is with the principal employer or with contractor, has to be determined with reference to factors like who pays salary, who has power to initiate disciplinary action, to remove/dismiss employee from service, who can tell employee the way work should be done etc. However where contract is merely to supply labour only, contract labour is bound to work under supervision of principal

employer. In such a situation, primary control still vests with contractor and not with principal employer.

Keeping above legal position in view, I proceed to deal with the evidence of parties on record. Copy of NCWA-IV is produced at time of argument. Clause 11.51, 11.52 prohibits engagement of contract labour on work of permanent nature.

15. Union filed affidavit of workers Mohan S/o Lachchu, Gangaram S/o Sampat, Shri Baliram S/o Ramvilas, Ram Prasad S/o Khikh Ram, Ramjiyawan S/o Munna, Ram Prasad S/o Ramdhani, Shyamlal S/o Ram Prasad, Tulsi S/o Rammit, Daduram S/o Vishali, Gaurishankar S/o Nankibabu, Kacharu S/o Purushottam and outsider Shri Narayan S/o Ram Sahay. The affidavit of evidence of all the above workers are almost identical. They were working in Central Store from February, 87 to 1996. They were doing work of loading, unloading, Stacking, cleaning. They were also going by truck to Koroba, Churcha, Bhalumada, Vishrampur for different kinds of store work. Regular workers Jaideen, Raja, Narayan, Bhaiyalal, Patiram, Shiv Prasad working in store through contract work were regularized. That the contractor was not holding licence. The establishment of IInd party was not registered. Those workers were paid wages bearing Rs.20/-, 25/-, 30/-. The evidence in their cross-examination needs to be carefully considered. Shri Mohan in his cross-examination says Shri Shubhkaran Bhura was disbursing pay to him. Affidavit of his evidence was prepared by Shri N.L.Pandey. Clerk in Central Store Bijuri were asking him to go for work to other places. The contractor Shri Shubhkaran Bhura was not objecting to it. That Shri Shubhkaran Bhura was coming to disburse payment to him. Except Shri Shubhkaran Bhura, no other person was disbursing payment. Shri Shubhkaran Bhura was not having any Munshi. When truck was not arrived, he was directed to do other work in the store. Leave was sanctioned to him by clerks. On instruction of clerk, he was going on truck to other sub-area. The documents were prepared after completion of work. He was unable to tell who has taken his interview. The clerks had engaged him on work. He had not submitted any application, his name was not sponsored through Employment Exchange. Orally Shri Shubhkaran Bhura told him not to come on work from next day. Even after termination of his services, he did not ask Bhura why he was terminated.

16. Shri Gangaram S/o Sampat in his cross-examination says that he doesnot understand meaning of work Registration. That Shri Shubhkaran Bhura had provided employment to all those 12 workers. Welfare Officer Khalco was paying wages. They were not taking any leave. Clerk in store office told him not to come to work. On that he did not go to Shri Shubhkaran Bhura

enquiring why his services were terminated. He had received net payment 1200/-. He completed 240 days continuous service. Witness Baliram S/o Ramvilas in his cross-examination denies that Shri Shubhkaran Bhura has employed him. That Shri Shubhkaran Bhura was preparing payment sheet. After making payment, his thumb mark were obtained on it. Photograph on W-11 was handed over to him by Shri N.L. Pandey at Mahendragarh. His photograph was not attested by any officer. He was receiving wages Rs.500/- per month. Workman Indrapal S/o Bullu Singh in his cross-examination says Shri Shubhkaran Bhura had employed him since 1986. Shri Shubhkaran Bhura was making payment to all those workers. He was putting thumb mark on it. He had not submitted application for employment. He was not interviewed, appointment letter was not received by him. Shri Shubhkaran Bhura was obtaining his thumb mark on payment sheet. Ramprasad in his cross-examination says that clerk Mr. Mihir had engaged him in work in 1987. He was not employed by Shri Shubhkaran Bhura, wages were paid obtaining his thumb mark on payment slip. At the time of payment Mr. Khalco used to remain present. In 1996, Mihir asked him not to come to work. He claimed ignorance whether Shri Shubhkaran Bhura was contractor of the company. That photograph on W-1 was handed over by him to Mr. Pandey at Mahendragarh. His photo was not attested. He has not submitted application for employment. He was not interviewed. His name was not sponsored through Employment Exchange. Appointment letter was not given to him. Shri Ramnarayan in his cross-examination has stated similarly that Shri Shubhkaran Bhura was obtaining his thumb mark on payment sheet. Shri Khalko used to remain present. Workman Khalko was on leave, some other officer was not sitting at time of payment. Rest of his cross-examination is devoted on same lines. Ram Prasad in his cross-examination says that he was employed by Mihir in 1987. All workers were employed by Mihir. They were not engaged by Shri Shubhkaran Bhura. Shri Shubhkaran Bhura was making to them. He claims ignorance whether Shri Shubhkaran Bhura was a contractor of the company. Mihir Babu told him in 1996 not to come again. His rest of the cross-examination is devoted on similar lines as other witnesses. Shyam Lal S/o Ram Prasad in his cross-examination claims ignorance whether Shri Shubhkaran Bhura was contractor of the company. He is illiterate and gives thumb mark. Payment was made by Welfare Officer Mr. Khalko. Shri Shubhkaran Bhura used to be present. After termination of his service, he did not go Shri Shubhkaran Bhura. Mihir told him not to come to work. Rest of his cross-examination is on similar line that of other witnesses. Tulsi S/o Rammit in his cross-examination says that he was engaged by Mihir Babu. Shri Shubhkaran Bhura was making payment and obtaining thumb mark on payment sheet. Shri Shubhkaran Bhura had not employed him. He not submitted application for

service. He was not interviewed. His name was not sponsored through Employment Exchange. Rest of his cross-examination is on same lines as other witness. Shri Daduram in his cross-examination says that officers in store were sitting in the office. He was going to them in search of work. That his attendance was marked in store office. There were total 5 godowns in the store. That they had gone to the store for work. He was not engaged by Shri Shubhkaran Bhura. The wages were paid by Shri Shubhkaran Bhura. Mihir Babu told him not to come to work. He had not submitted any application, appointment letter was not received by him. Mihir was sanctioning leave to him. He did not asked Shri Shubhkaran Bhura for providing employment. Rest of his cross-examination is devoted on similar lines as other workers.

17. Gaurishankar S/o Nankibabu in his cross-examination says he does not know about Form B. His affidavit was prepared by Shri N.L. Pandey. he is not educated person. He did not enquire from Shri Shubhkaran Bhura whether he was holding licence. He had no knowledge about it. He and other workers were putting thumb mark about their attendance. That Shri Sunil Kumar had told him not to come to work. He had not submitted application for employment. He was not interviewed. His name was not sponsored through Employment Exchange. Rest of his cross-examination is devoted on similar lines. Shri Shubhkaran Bhura was taking amount from colliery and paying wages to them. Shri Daduram in his cross-examination says that Shri Shubhkaran Bhura was paying wages to him. He was obtaining his thumb mark on payment sheet. That they were working in store. Similar work of loading, unloading was done by regular employee. Shri Shubhkaran Bhura was not objecting to them working in stores.

18. Management adduced evidence of his witness of Shri I.V. Chawra Asstt. Store Keeper working since 1981 at Bijuri. He has stated in his affidavit in 1987/92, tenders were invited to undertake loading and unloading of materials received through rails/road i.e. Iron & Steel, A.C. Sheet, Cement and unserviceable materials. Shri Shubhkaran Bhura having quoted lowest rate, was awarded the contract the Regional Stores was in North Jhagrakhand. Shri Shubhkaran Bhura himself was supervising the work. When the store was shifted to Bijuri, Shri Gaurishankar was supervising the work of loading unloading. It is pertinent to note than dispute relates to working of all workmen at Bijuri Store. Gaurishankar is not alleged to be a contractor. This witness further says that no other work provided in contract was done by the workmen. These worker were never sent to Korba, Baikunthpur etc. In his cross-examination, Mr. Chawra says workers of Shri Shubhkaran Bhura contractor were about 8 to 10 in number. He recollect name of Shri Gaurishankar. Shri M.K. Rai was Asstt. Store Keeper. The

contractor was giving instructions of duties to the workmen. He denies that contract workers were reporting to Chief Store Keeper. In his further cross-examination, he says that he did not go to home. The contractor's workers reported but their work was supervised by contractor. That entries about coming to work and reporting back was not taken in register. The contractor was still providing work to the workers. On completion of work, they were returning back. The contractor's labours were going by Truck to Bistrampur. All contrary suggestions are denied by the witness that contract workers were not working with regular workers. Sometimes clerk and workers were going with contract labours. The charges were paid by contractor. Contractor himself was supervising payment of wages.

19. Management's witness Shri Sunil Kumar in his affidavit says that Shri Shubhkaran Bhura had submitted lowest rate. He was called and after negotiation, final rate was fixed and contract was executed. The contract was entered with Shri Shubhkaran Bhura in 1987/92. After 2 years, letter M-18 was issued to Shri Shubhkaran Bhura requesting him to continue contract at same rate. He denied material suggestions of workman that tender was finalized after completion of work. In his cross-examination, Shri Sunil Kumar says no entry was taken of labours going in stores and returning back. That as per his knowledge, the work was for period 1990 to 1994. The payment of wages were supervised by him. It is pertinent to note that any of the documents about tender, agreement, work orders were not proved from evidence of this witness. Affidavit of evidence of Shri H. Khalko is filed by IInd party. Management's witness Khalko says that contractor Shri Shubhkaran Bhura was engaged on contract rate. He was making payment of wages to his workers. About 6-8 workers were working. Charges were paid as per LPC. He admits that W-8 bears his signature. Shri Sunil Kumar had obtained his signature under threats, forced to drink liquor. In his cross-examination, he says that he was working from 1986 to 1992 both the stores and workshop were under control. He was supervising payments by contractor Shri Shubhkaran Bhura. He used to sign payment sheets. Whenever payments were made he signed on the payment sheet. From evidence in cross-examination of this witness documents Exhibit W-2 to W-6 are exhibited on his admission.

20. Exhibit W-1 is register of entries taken of visitors in mine during the period 1-6-93 to 22-9-94. Exhibit W-2 are labor payment certificates issued by Welfare Officer for the period 1-11-93 to 30-6-95. Those documents do not bear signature of Shri Shubhkaran Bhura, contractor. Document Exhibit W-3 is register payment of loading/unloading in the stores shows names of all those workmen. Exhibit W-4 is register of entries of visitors (outsiders)

names of all those 12 labours are found in it. Reasons shown in Column-4 to meet Chief Store keeper- time of arrival is 9AM & departure is 5.30 PM and sometimes absence of those workers are also marked. Union Representative Mr. Pandey rightly pointed out my attention that the entry of arrival and departure shown in Exhibit W-4, the absence of workman indicates working in the store. Exhibit W-7 is copy of order passed by Chief Labour Commissioner in the matter of application filed by those workers for payment of wages under NCWA.

21. Learned counsel for management Shri A.K. Shashi submits that workman claimed wages claiming to be employees of Principal Employer i.e. IInd party. They cannot be permitted to plead to the contrary that they were employed by contractor and the contract was sham and bogus. The pleadings in statement of claim referred above, workmen are reiterating that they were employees of the Principal Employer i.e. IInd party but they were shown contractors employees. The contract was bogus. There is no inconsistency in pleadings as argued by learned counsel for management. I find no substance in above argument. The pleadings of the workmen are clear that the contract was sham, bogus. The evidence of the some of the workmen is not consistent on the point of engagement and payment of wages. Workers claimed that wages were paid to them by the stores employees and some of the workers have stated that wages were paid to them by Contractor Shri Shubhkaran Bhura and obtained their thumb mark on paysheet. All workers are illiterate persons. Their evidence is adduced after lapse of many years. The evidence of management's witnesses is not supported by documents. The evidence of management's witnesses cannot be believed as the entries were taken in Exhibit W-4 in name of the workers and time of arrival and departure and time of meeting to CSK from the period 1-6-93 to March, 94. The evidence of management's witness is contrary to the entries in Exhibit W-4. Document Exhibit W-5 shows bills submitted for payment during 1-1-1987 to 31-12-1987. Exhibit W-6 is letter given by Store Officer for extension of contract period from 1-1-1991 to 31-3-92. The note clearly shows that there was acute shortage of the workers in the stores. Above evidence corroborate evidence of workers they working in store.

22. Learned counsel for management Shri A.K. Shashi emphasized that in document Exhibit W-2, number of workers is shown 16 to 17. Labour payment certificate is issued by Welfare Officer. That the contractor had not engaged more than 20 labours and therefore the contractor was not required to obtain licence under Section 12 of Contract Labour (Regulation and Abolition) Act, 1970. The note submitted by union Representative Mr. Pandey refers to evidence of management's witness Khalko that more than 25 workers were working with the contractor Shri Shubhkaran Bhura. The evidence of Union is also

supported by outsider Shri Narayan. Shri Narayan says that all those workers were working in Regional Stores Hasdeo from 1987 to 1996. He was working with them. That those workers were also going by Truck to Railway Siding and Korba Area, Bistrampur Area, Churcha as per requirement. Their number might vary in 5,7,15. They were going by Truck along with regular employees. The services of those workers were discontinued from February, 1996. In his cross-examination, Narayan says prior to 1987, he was not paid wages by management, contractor was making payment. That in February 1996, Shri Shubhkaran Bhura was making payment to regular employees. Separate register for regular employees was maintained. Shri Shubhkaran Bhura also supported claim of Union filing affidavit of his evidence that all those workers were working in the store from 1987 to 1996. They were also going to Korba, Churcha by Truck. Their number was varying from 5 to 15. In his cross-examination, witness had admitted signature on documents M-5 to M-15 w.r.t. the tender. The documents about tender, work orders, payment sheets are not tallying w.r.t. the period of working, period of tender. The tenders and work orders are subsequent in time. Document Exhibit M-1 is proforma of tender notice dated 10-7-87 giving rates for loading, unloading stacking etc. work. Exhibit M-2 is tender notice dated 20-1-91. However the bills W-5, work order are subsequent in time. Thus oral evidence of management's witnesses is not corroborated with the documentary evidence. The evidence of management's witnesses is silent how the work was done by contractor without there being agreement, work order at the relevant time. To conclude the evidence of workman who are illiterate person is corroborated by outsider Narayan, contractor Shri Shubhkaran Bhura and evidence on record. therefore the evidence of witnesses of the Union cannot be discarded. Contractor Shri Shubhkaran Bhura in his cross-examination says he was nominal contractor. All the labours were working under instruction of the officers. His evidence on above point is not shattered in his cross-examination. In his cross-examination, in Para-13, he has reaffirmed that he was receiving 5 % commission. Its bill was separately prepared. The witness has admitted his signatures on the documents. The evidence shows that tender of Shri S.N.Agrawal and Jain were submitted with him in 1992-Exhibit M-12 & 13. The evidence is silent whether tender by any person were submitted in 1987. There was absolutely no contractor on record from January, 1987 to July, 1987 and after 1994 to February, 1996.

23. The registration certificate is not produced by IInd party. Union Representative Shri Pandey submitted that adverse inference be drawn. In support of his submissions, reliance is placed in ratio held in case of Bharat Heavy Electricals Ltd. Versus State of UP reported in 2003(6)SCC-528. Their Lordship with reference to Section 114 Clause

III(g) Evidence Act held failure to produce records alleging that they were not available, adverse inference were rightly drawn. Shri A.K.Shashi for management on the point relies on ratio held in

Case of Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8) Supreme Court Cases 750. Their Lordship dealing with Section 25-F, 25 B of I.D.Act held adverse inference may be withdrawn by Court. Workman claiming to have been in employment for 10 years with employer, employer not producing record for 10 years courts below drawing adverse inference against it and reinstating workman. Scope of enquiry before Labour Court was confined to only twelve months preceding the date of termination to decide question of continuation of service.

The facts of present case are not comparable. The adverse inference w.r.t. non-production of registration certificate is involved in present case and not relating to the continuous working. Therefore the ratio in above cited case cannot be applied to case at hand.

24. The evidence on record shows that from Bijuri store, materials were supplied to 5 mines in the near by area. The work was continuously carried. As per the chart submitted by Union. Working days of workers are more than 240 days during all the years. It shows that the work carried in the workshop was of permanent and regular nature. The work in the workshop supplying materials cement, cement sheets, steel articles appears integral part of the establishment of IInd party. The evidence discussed above clearly demonstrate that the contractor shown in the matter was nominal. Infact no contract executed by Shubhkaran Bhura is produced on record, only signatures on documents, tenders, labour payment clearance are produced Exhibit M-1 to M-15. Therefore it is sufficiently proved that all those workmen were employees of the Principal employer i.e. IInd party and contract was camouflage. For above reasons, I record my finding in Point No.1 in Affirmative.

25. Point No.2- In view of my finding in Point No.1 Gaurishankar and 11 others are held workmen of IInd party and contract is found camouflage, the question arises for decision as to whether all those workmen are entitled for regularization. The argument were advanced by learned counsel for IInd party Shri A.K. Shashi that the services of workmen were terminated. Said point is not covered under terms of reference. As the workmen are not in employment, relief of reinstatement cannot be allowed. In reply, Union Representative Shri Pandey submits that as per Section 10(4) of I.D.Act, the matters incidental to reference is also required to be decided by the Tribunal. Powers of the Tribunal are wide. Reliance is placed on ratio held in case of Delhi Cloth and General Mills Co. Ltd. and their workmen. Their Lordship held Tribunal might in any event look to findout the exact nature of the dispute

because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. Therefore the incidental question involved can be decided by the Tribunal. Learned counsel for IInd party Shri A.K. Shashi submits that workmen were not appointed following recruitment process submitting application, facing interview, appointment letters were not given to them. The witnesses of Union - most of the workers have deposed in their evidence that they have not submitted application for appointment, they were not interviewed, their names were not sponsored through employment exchange. Mr. Pandey Union Representative on the point submits that when the contract is found camouflage workers become employee of Principal Employer as per Ratio held in Steel Authority of India Ltd reported in 2001(7) SCC-1, workers are entitled for reinstatement. My attention is point out to Para-125 of the judgment. Their Lordship have given abstracts of the discussions. In sub-para-5, their Lordship observed on issuance of prohibition notification under Section 10(1) of CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment. In the light of Para-6, their Lordship observed if the contract is found to be genuine and prohibition notification under Section 10(1) of CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the conditions as to academic qualifications other than technical qualifications.

26. Learned counsel for IInd party Mr. Shashi further submits that workmen were not engaged following recruitment process. They are not entitled for

regularization. In support of his argument, learned counsel relies in case of

Secretary, State of Karnataka and others versus Umadevi and others reported in AIR 2006-SC-1806, their Lordship dealing with public employment appointment dehors due process of selection envisaged by constitutional scheme confers no right on appointee. It is further held that regularization of daily wage appointed in violation of constitutional scheme. Right of court/executive would not extend to directing regularization to be treated as permanence in service. The fact that employee has continued for long, irrespective. That apart, principle of equal pay for equal work cannot also be applied for giving relief of permanency. Doctrine of legitimate expectation cannot be invoked by such employees merely because in past State had regularized similarly placed employees.

Above judgment is of the year 2006. Shri Pandey on the point further pointed out my attention on subsequent ratio held in

Case of General Manager, Oil and natural Gas Commission, Silchar vrs Oil and Natural Gas Commission Contractual workers Union reported in 2008(12)SCC-275. In para-6, their Lordship w.r.t. the judgment of Umadevi we find that often Umadevi case is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University case and Bharat petroleum Corporation Ltd. case, a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence in our opinion, Umadevi case cannot be applied mechanically without seeing the facts of a particular case as a little difference in facts can make Umadevi case inapplicable to the facts of that case.

In para-21, their Lordship observed it has also been observed that ONGC had admitted that since 1988, there was no licensed contractor and that the wages were being paid through one of the leaders of the Union and one such contractor, Manik has been named. The Tribunal then opined that it appeared from the record that Manik himself was a workman and not a contractor as he too was shown in the acquaintance roll to have received wages. We find that the real issue was as to the status of the workmen as employees of ONGC or of the contractor, and it having been found that the workmen were the employees of ONGC they would ipso facto be entitled to all benefits available in that capacity, and the issue of regularisation would, therefore, pale into insignificance. We find that in this situation, the Industrial Tribunal and the Division Bench of the High Court were justified in lifting the veil in order to determine as to the nature of employment in the light of the judgments quoted above. We therefore find that the

ratio of the judgment in Umadevi case would not be applicable and that the facts of the Pandey case are on the contrary more akin to the facts of the present one.

The evidence of Shri Shubhkaran Bhura is clear that he was a nominal contractor. In his cross-examination he says he received 5 % commission. His evidence on those nominal points is not challenged in his cross-examination. When contract was camouflage as per ratio held in above cited case, the workers are entitled to all benefits as employees of IInd party.

27. Shri Pandey further submits that workmen were terminated during pendency of reference proceeding before appropriate Government without taking permission under Section 33(2)(B) of I.D. Act. consequently the order of termination is void and employee is continued to be in service. In support of above argument, ratio is placed in

Case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd versus Ram Gopal Sharma and others reported in 2002(2) Supreme Court Cases 244. Their Lordship dealing with Section 33(2)(b) of I.D. Act proviso held non-approval of the order of discharge or dismissal. In such circumstances, employee continues to be in service as if the order of discharge/dismissal was never passed. Their Lordship further held that requirement of Section 33(2)(b) of I.D. Act are mandatory. Failure to make application for approval of the order of discharge or dismissal or withdrawal of such application after making it renders the order of discharge or dismissal void and inoperative.

On above point, reliance is also placed in case of Cholan Roadways Ltd. Versus G.Thirugnanasambandam reported in 2005(3) Supreme Court Cases 241. Their Lordship held Section 33(2)(b) is limited and cannot be equated with that under Section 10. While considering grant of approval under Section 33(2)(b), Tribunal is required to see whether a prima facie case has been made out as regards validity of the domestic enquiry, keeping in view that the dismissal would be liable to challenge in terms of the Act.

In present case, Written Statement or evidence of management's witnesses is silent about the mode and manner the services of workmen were terminated, any chargesheet was not issued, enquiry was not conducted. Therefore the ratio held in the case has no direct bearing on controversy between the parties.

28. Shri A.K.Shashi has produced copies of award passed by this Tribunal in R/197/98 for persuasive purpose. Para-26 of the award makes it clear that in said case, evidence on record shows that all claimants were engaged by the contractor as such appointment authority, wages were paid by the contractor, services were discontinued by the contractor. Thus the evidence on record cannot establish that the agreement with contractor

was mere camouflage. Therefore the award pointed out cannot be relied for persuing purpose.

29. Union Representative Mr. Pandey also produced copy of award passed by this Tribunal in R/235/90 allowing claim of workman for regularistaion. Each of the matter needs to be decided on evidence adduced by parties. The evidence adduced by Union is clear that the contractor was nominal as such camouflage. As per ratio held in Oil and Natural Gas Commission case, the employees are entitled to all the benefits as employees of Principal Employer. The ratio held in Umadevi case cannot be applied mechanically as discussed above.

30. Shri A.K.Shashi relies on ratio held in

Case of Indian Drugs and Pharmaceuticals Ltd. Versus workmen, Indian Drugs and Pharmaceuticals Ltd reported in 2007(1) SCC 408, their Lordship held regularisation cannot be mode of appointment. Rules of recruitment cannot be relaxed and the Court tribunal cannot direct appointment dehors rules. Their Lordship held regularisation can only be done in accordance with the rules and not dehors the rules. Their Lordship dealing with Article 16,14 & 309 of the constitution held creation of the post, appointment to the posts, regularisation, fixing of pay scales, continuation in service, promotions etc. financial and economic considerations. Permissibility of state to take them into account. Impermissibility of interference by court on basis of compassion. Held court cannot impose on state a financial burden by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly.

The ratio held in General Manager, Oil and Natural Gas Commission 2008(12)SCC 275 is subsequent in time and the ratio held in said case is clear that if contract is found camouflage, the workmen are found entitled to the benefits of employee of Principle employer. Therefore the claim of workman for regularisation is covered under ratio held in said case. Employees were working since 1987 till 1996 showing them as contract labour.

Shri A.K.Shashi also relies in ratio held in case of Post Master General Kolkata and others versus Tutu Das reported in 2007-III-LLJ-163. Their Lordship dealing with article 309 of constitution held completion of 240 days service not relevant for regularisation. Daily rated substitute ELA claiming regularisation on basis of certain circular. Shri A.K.shashi further submits that as services of workmen are terminated in violation of Section 25-F workman cannot be regularised rather compensation would meet the ends of justice. In support of above argument, reliance is placed in ratio held in case of Assistant Engineer, Rajasthan development corporation and another versus Gitam Singh reported in 2013(5) SSC 136. Their Lordship dealing with termination in contravention of Section 25-F, directed payment of compensation of Rs.50,000/- in above cited case. There

was no question of contract labour and the contract was camouflage. Therefore the ratio held in above cited case cannot be applied to the case at hand. As discussed above, claim of workman for regularisation is covered by ratio held in 2008(1) SCC-275.

31. Reliance is placed by shri Pandey in ratio held in case of Harinandan Prasad and another versus management of FCI and another reported in 2014-II-LLJ-54. The ratio cannot be applied to present case as the benefit of the circular dated 6-5-97 was denied to the workman in above cited case. In present case, no such benefit of any circular is involved. As discussed earlier, the copy of NCWA-IV made available.

Clause 11.5.1 provides Industry shall not employ labour through contractor or engage contractor's labor on jobs of permanent and perennial nature.

Clause 11.5.2 provides jobs of permanent and perennial nature, which are at present being done departmentally will continue to be done by regular employees.

IInd party has violated above clause of NCWA-IV. The services of all workmen are terminated in violation of Section 33(2)(b) therefore termination of workmen is in violation and the workmen are deemed continued in employment of IInd party. The evidence of workers is not clear after termination of their service, how they are surviving. No evidence is also adduced by management about those surviving workers are in gainful employment. No argument are also advanced on the point of back wages. To be fair and judicious, workmen cannot be allowed full back wages without working. In my considered view, reinstatement of surviving workers deserves to be allowed with 50 % back wages. For above reasons all the surviving workmen are entitled for regularization of their services with 50 % back wages and employees who died during pendency and the employees who attained age of superannuation will be entitled to the benefit of regularization of service till the date of death/superannuation. Accordingly I record my finding in Point No.2.

32. In the result, award is passed as under:-

- (1) Action of the management in not regularizing workers engaged in different jobs of stores of Hasdeo Area at Bijuri is illegal.
- (2) IInd party is directed to regularize services of surviving employees shown in list annexed with reference with 50 % back wages and continuity of service.
- (3) Deceased workman Shri Mohan S/o Lachchu, Lallu S/o Babulal and Dasharu S/o Narottam shall be deemed in service till their death and their legal heirs be paid 50 % wages.

- (4) Workmen attaining age of superannuation shall be deemed in service and 50 % wages be paid to them till date of their superannuation.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2540.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 214/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 12-09-2014 को प्राप्त हुआ था।

[सं. एल-22012/293/1996-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2014

S.O. 2540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 12/09/2014.

[No. L-22012/293/1996-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/214/97

PRESIDING OFFICER : SHRI R.B.PATLE

General Secretary,
Pench Kanhan Koyla Khadan Karmchari Sangh,
Post Damua,
Distt. Chhindwara (MP)Workman/Union

Versus

Manager, Ghodawari Colliery of WCL,
Post Ghodawari
Distt Chhindwara (MP)Management

AWARD

Passed on this 22nd day of August 2014

1. As per letter dated 22-7-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/293/96-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Ghorawari colliery of WCL, Kanhan Area in demoting Shri Hemu Prasad Sharma from the post of SDL Operator, Cat VI to Haulage Khalasi, Cat-III w.e.f. 1-12-93 is legal and justified? If not, to what relief the workman is entitled and from which date?”

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 7 to 15. Case of Union is workman was appointed as tub loader in Ghorawari colliery of WCL. His grade was changed from tub loader DPR in job of General Mazdoor Category-I. that charge No. 434/93 was issued to workman on 5-5-93 implicating falsely. The allegation was that workman has beaten and abused Safety Officer. He has also threatened to kill him. The place and location of incident was not disclosed. Workman had suffered prejudice. Workman was not supplied copy of report during enquiry proceedings. Workman was not given reasonable opportunity to prove his innocence. The statements of Shri M.K.Joshi and Hirday Singh, Rafique were relied. Its copies were not supplied to workman for effective cross-examination of respective witnesses. Enquiry Officer was biased. Shri A.K.Singh Enquiry Officer was accompanying Shri M.K.Joshi Safety Officer on back seat of his scooter at the time of occurrence of incident. The incident occurred on public road near labour colony. Workman was injured. It is submitted that witness cannot be judge in the matter. Shri A.K.Singh Personal Manager with M.K.Joshi Safety Officer have falsely implicated workman. FIR was also lodged to the police station, Damua. Enquiry Officer Shri A.K.Singh was also Dy.Personal Manager. He threatened workman if he report to police, he would be dismissed. That quarrel occurred between workman outside working hours far away from work spot was a private matter. It is not covered under Model Standing Orders. That witnesses including Shri M.K.Joshi Safety officer admitted in his statement that he reported to police regarding incident. Enquiry Officer denied to supply said report for cross-examination. It is submitted that enquiry is not conducted properly. Principles of natural justice were not followed. On such ground, reinstatement of workman Hemu Prasad Sharma with back wages is prayed.

3. IInd party management filed Written Statement at Page 21 to 27. IInd party submits that chargesheet was issued to workman on 5-5-93. The allegation were that the workman has beaten and abused Shri M.K.Joshi, Safety Officer and also threaten to kill him at about 5.15 PM on 4-5-93. Shri Anil Singh was appointed as Enquiry Officer and Shri M.Khan was appointed as representative of Management. The workman admitted charge in presence of co-worker. The witnesses of management were examined and cross-examined by co-worker. Considering report of Enquiry Officer, leniency was

shown. Workman was demoted vide order dated 27-11-93. It is submitted that serious misconduct committed by workman assaulting Sr. Officer threatening him to kill is proved. Punishment imposed against workman is proper. Reference be answered in favour of management.

4. Workman submitted rejoinder at Page 29 to 33 reiterating his contentions in Statement of claim.

5. Management submitted rejoinder at page 41 to 47 reiterating his contentions in Written Statement.

6. My learned predecessor vide order 4-12-12 held enquiry conducted against workman as illegal. Management was permitted to prove misconduct in Court. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--------------------|
| (i) Whether the alleged incident occurred outside industrial premises of IInd party or management of IInd party was not competent to issue charge-sheet? | In Negative |
| (ii) Whether the action of the management demoting workman Hemu Prasad Sharma from the post of SDL Operator, Cat VI to Haulage Khalasi, Cat-III w.e.f. 1-12-93 is legal and justified? | In Negtive |
| (iii) If not, what relief the workman is entitled to?” | As per final order |

REASONS

7. Ist party Union has contented that the incident occurred on public road. IInd party has no authority to issue chargesheet. Punishment imposed against workman is illegal. IInd party had denied those contentions of the Union. However enquiry conducted against workman is found vitiated for various reasons. The chargesheet is produced alongwith list. Chargesheet was issued to workman alleging misconduct under model standing order Clause 17-1 (r) giving threats, abuses and assaulting superior officers by workman. Management's witness Shri M.K.Joshi in his evidence has stated that on 4-5-93 around 5.15 PM, when he was going to Ghorawari Colliery HEMM Garriage, a scooter was passing from Miners colony by side of Jharna Road. One boy had come from right side of road. Somebody called him, he changed gear of his scooter and applied break. Scooter proceeded 5-6 feet distance. The boy coming running towards his scooter dashed to the mudguard. That he lost control of his scooter. He felled down and at that time the workman had rushed towards him started bearing causing bleeding injury at his nose. One lady had intervened and separated from workman. In his cross-examination, management's witness says on day of incident, workman was at his home. Boy had suffered

injury at road and not at mine. Personally he did not know workman. He claims ignorance whether report was lodged to police about incident and any case is pending about such FIR.

8. As enquiry is vitiated, the evidence in Enquiry Proceedings cannot be considered. Learned counsel for workman Shri Yadav submits that the evidence on affidavit of workman may also be considered while deciding the matter. Workman in his affidavit of evidence has also stated that on 4-5-93, he had returned from mine around 4.30 AM while he was changing clothes he heard cries of his son. He and his wife had come out of his house and noticed their son lying under wheel of the scooter. Shri M.K.Singh was standing. That A.K.Singh and Joshi fell from Scooter. The place of incident is not in dispute. On the point whether management has authority to conduct enquiry of incident outside its premises, learned counsel for IInd party Mr. Shashi relies on ratio held in

Case of Central India coalfields Ltd. Calcutta versus Ram Bilas Shobnath reported in 1961-I-LLJ-546. Their Lordship held normally standing orders would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside the working hours and away from the workspot that would be a private matter which may not fall within the provisions of such standing order. But in the special circumstances of the instant case it is clear that the incident took place in the quarters at a short distance from the workspot. Hence the action of the employer in disbursing such workmen must be held proper and justified. It was further proved that unless the employer took some action against the concerned workman, break of peace among the workman was threatened. The employer could not consider such matter with complacence.”

9. On the same point, learned counsel for IInd party Shri Praveen Yadav relies on ratio held in

Case of M/S Glaxo Laboratories Ltd., Versus Presiding Officer, Meerut and others reported in AIR-1984-SC-505. Their Lordship held where standing orders of an establishment provided that certain acts would constitute misconduct if committed within premises of the establishment or in the vicinity thereof then any misconduct committed anywhere irrespective of the time place content where and when it is committed cannot be comprehended to be the misconduct within the meaning of the standing orders merely because it has some remote impact on the peaceful atmosphere in the establishment. The words committed within premises of the establishment or in the vicinity thereof are words of limitation and they must cut down the operation of the standing order. The misconduct prescribed in a standing order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which

would be within the establishment and during duty hours. The casual connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous.

10. Model Standing Orders for industrial establishment in coal mines. Misconduct are provided Clause r deals with threatening, abusing or assaulting any senior or co-worker. Chargesheet was issued to co-worker under clause 17(1)(r) as per ratio held in M/S Glaxo Laboratories discussed above. The misconduct prescribed in standing order would attract penalty as casual connection with place of work as well as the time at which it is connected would ordinarily within the establishment and during duty hours. The evidence of Shri M.K.Joshi is clear that incident occurred on road near quarter of workman. Said incident was absolutely not connected with the duties or working of the establishment of IInd party. The occurrence of incident was totally private matter. The evidence further shows that the incident was reported to police. Considering ratio held in Glaxo case, management was not competent to issue chargesheet and conduct enquiry as incident was private matter. For above reasons. I record my finding in Point No.1 in Negative.

11. Point No.2- in view of my finding in Point No.1 that management of IInd party was not competent to issue chargesheet or conduct enquiry against workman for the incident outside its establishment. Punishment of demotion against workman cannot be upheld. For above reasons, I record my finding in Point No.2 in Negative.

12. In the result, award is passed as under:-

- (1) The action of the management of Ghorawari colliery of WCL, Kanhan Area in demoting Shri Hemu Prasad Sharma is not legal and proper.
- (2) Order of demotion of workman from the post of SDL Operator, Cat VI to Haulage Khalasi, Cat-III w.e.f. 1-12-93 is quashed and set-aside. Consequential benefits be allowed to the workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2014

का.आ. 2541.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्टरक कैंटीन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 चंडीगढ़ के पंचाट (संदर्भ संख्या 83/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/09/2014 को प्राप्त हुआ था।

[सं. एल-42012/22/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 12th September, 2014

S.O. 2541.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 83/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the ARTRAC Canteen and their workman, which was received by the Central Government on 11/09/2014.

[No. L-42012/22/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH**

Case No. ID 83 of 2013

Reference No. L-12012/22/2013-IR (DU)

dated 20-6-2013

Sh. Devki Nand Kalta
S/o Sh. Kewal Ram Kalta.
R/o Village Khalantu,
P.O. Mohri. Tehsil The of
Shimla (Himachal Pradesh)

.....Workman

Versus

1. The Chairman,
Managing Committee ARTRAC Canteens,
Shimla (Himachal Pradesh)
2. The Manager ARTRAC Canteen,
Shimla (Himachal Pradesh)Respondents

Appearances

For the Workman : Sh. J.C. Bhardwaj

For the Management : Sh. Vijay Arora Advocate

Award Dated : 03-09-2014

Government of India Ministry of Labour vide notification L-42012/22/2013-IR (DU) dated 20-06-2013 has referred the following dispute to this Tribunal for adjudication :

Term of Reference :

“Whether the action of the Managing Committee of ARTRAC Canteen, Shimla in terminating the service of Sh. Devki Nand Kalra w.e.f. 30-09-2012/08-1-2013 without following the procedure laid down U/s 25-F of the ID Act. 1947 is just and legal? To what relief the workman is entitled to and from which date?”

2. On receipt of the reference notices were issued to the parties. Workman filed claim statement pleading therein that he was appointed as salesman on 15-06-2002 and upgraded as storekeeper and posted in Army Training Centre Canteen. Shimla and remained till he was transferred from Shimla to Mandi on 15-11-2011 against the policy and minutes of management committee meeting held on 21-06-2006 wherein chairman agreed that there is no change in transfer policy of employee and status-quo shall be maintained. However mutual transfers within the canteens can be considered at this headquarter. The transfer of the workman from Shimla to Mandi was made against the policy when the workman left only three years to retire which is discriminatory. The workman made representation for cancellation of his transfer but his representation neither accepted nor rejected till today. Workman never made request for any mutual transfer. Aggrieved from the action of transfer of the workman the workman file O.A. No. 1266/HP/2011 before Central Administrative Tribunal, Chandigarh for stay or the transfer. The Hon'ble CAT passed the interim direction of stay till the next date, The copy or the order of the CAT was served to Manager Army Training Canteen, Shimla. The workman remained going everyday to the office i.e. canteen but manager did not allow his entry in the premises of the canteen. The canteen manager adopted the policy of pick and choose by retaining some or the employees with longer stay and transferred the workman against the directions of his superior. Workman filed contempt petition before the CAT. however the O.A. was dismissed by the CAT on the point of jurisdiction with the liberty to raise all contentions in the appropriate court of law. Workman moved Hon'ble High Court of Himachal Pradesh Shimla by filing CWP No. 4484 of 2012 which was rejected for lack of jurisdiction on 27.9.2012. Therefore, the workman filed the case before this court. It is further pleaded by the workman that chairman of the managing committee or Army Training Canteen issued notice or termination to the workman with the direction to join duty at a transfer station at Mandi by 22.01.2012 otherwise the services of the workman will stand terminated.

3. That after the dismissal or O.A. as withdrawn the workman filed a writ petition before the Hon'ble high Court of Himachal Pradesh which was decided on 27.09.2012 with the observation that the workman was not holding civil post but he is workman under the ID Act. 1947 and the concerned Central Industrial Tribunal will have the jurisdiction to entertain such matter and writ petition was rejected for lack of jurisdiction and the workman is free to choose the appropriate forum which they want to approach. Workman left with no alternative. went to join his duties on his transfer place at Mandi on 30.09.2012 and submit his joining report on 1.10.2012 but he was not allowed to join by the manager of the

canteen and was told that his services already been terminated as per order dated 24.11.2011. It is pleaded by the workman that he never abandoned his job. He was fighting for justice under legal remedies but he could not succeed. The removal of the workman is retrenchment for all purpose under Section 2(00) of the Act. The management had not followed any disciplinary proceeding or conducted any inquiry against workman. Though the workman has worked more than 240 days in a calendar year of his service and he was a confirmed employee and rendered more than 8 year of long service and cannot be thrown out in any manner as done by the management without holding any inquiry and the termination of the workman is violative of fundamental rights under Article 14 and 16 of Constitution of India. The workman filed demand notice and the present reference is the result of the demand notice. It is further submitted by the workman that his work and conduct through out his service were excellent and his removal from service without any inquiry is violation of principle of natural justice. The same may be declared illegal, null and void and the workman may be directed to be reinstated in service with all service benefits along with full back wages with costs, seniority and other consequential benefits. Along with the claim statement workman also filed documents which included initial appointment letter, confirmation letter, posting letter, movement order, request for cancellation of posting from Shimla to Mandi, representation, minutes of meeting dated 21.06.2006 order dated 30.11.2011 of Central Administrative Tribunal, Chandigarh, order dated 30.12.2011 of CAT, nominal role or employees, copy of order of CAT dated 24.05.2012 which is stay for termination of service, Copy of order of Hon'ble High Court dated 27.09.2012 and copy of SOP rules and copy of letter dated 8.01.2012, terminating the services of the workman which are exhibited as Ex. W2 to W14 in evidence.

4. Management filed reply. Preliminary objection has been taken that the reference is not maintainable being false, frivolous, baseless and filed with ulterior motive and with mala fide intention to cause harassment and prejudice to the management which is managed by Central Govt. Department. The objection has also been taken that the Unit canteen are managed and run by an independent committee and its office bearers are serving in the committee in honorary capacity which do not come under the direct control of Ministry of Defence and it is purely private venture and at no stretch of imagination the employees of the Govt. or CSD. The writ petition of the workman was also disposed off by the Hon'ble High Court on the ground of jurisdiction. The workman was transferred as per the transfer policy. The workman never reported to anyone as on 30.09.2012 it was not a working day of the canteen being Sunday. The workman have signed on terms

and condition of the service and were bound by provisions. The workman was transferred for the smooth functioning of the organization and keeping in view the work requirement. The service of the workman were terminated on 8.1.2013 as per the condition mentioned in the appointment letter itself and the management prayed for the dismissal of the case of the workman. The management along with reply also file a judgement of the Hon'ble High Court of Kerala in WP No. 16668 of 2012. The management also filed a certificate annexure 2 and alleged transfer policy as annexure 3.

5. The workman filed replication reiterating the claim made in the claim statement and denying the averment of the contents in the written statement. In evidence workman filed his own affidavit. The management filed the affidavit of Col. R.S. Mehta staff officer canteen managing committee Shimla. Workman examined and cross-examined by the learned counsel for the management. The workman in cross-examination stated that he was given the appointment letter but he does not remember whether there was any condition about defying the order. There was a condition that he may be transferred to any other canteen situated outside Shimla. It is stated by the workman in cross-examination that he was transferred from Shimla to Mandi and served there for three years. There was three/four more employees who were transferred from Shimla to other place but none of the transfer employee joined to their place of transfer. It is further stated by the workman in cross-examination that on different dates five employees were transferred outside Shimla but none of them joined their post. He also stated that he is an old person he did not try for any other job after his termination and he has no other source of income and he was getting the pension from the army only. WWI Shri D.N. Kalta re-examined on 21-08-2014. He stated in re-examination that he has not Joined ex-serviceman canteen at Mandi after the transfer order in question.

6. MW1 witness of the management stated in cross-examination that both the canteens i.e. ARTRAC and ex-serviceman canteen are under the control of same management i.e. headquarter army training centre and these canteens are not registered under the shop and Commercial Act and he has not sure about the registration of the canteen under the above act. He further stated that canteens are purely private venture and he confirms the contents of his affidavit in para No. 12 that canteens are managed by the Central Govt. Department. He also stated that he was not aware whether there is only post for storekeeper and that is only available in Shimla. The minutes of meeting appears to be correct. When the workman was absent, he was given show cause and warning. But he do not remember whether any charge sheet was given to the workman or any inquiry was held

against the workman. He further submit that the management followed the procedure as mentioned in SOP before discharge/termination of workman. He also stated that he does not remember whether one month pay was given to the workman before his termination or any compensation was given to the workman at the time of termination.

7. Arguments of the parties have been heard. The first question for determination is whether the termination of the workman w.e.f 30.09.2012/08.01.2013 without following the procedure laid down under Section 25F of the ID Act, 1947 is legal and justified. This question has also been mentioned in the terms of reference sent by the Central Government for adjudication. Workman was employed on 15.06.2002. by letter of appointment. He was promoted and confirmed on the said post vide letter of promotion (Ex. W3). Workman was transferred from Shimla to Mandi. Workman did not join at the transferred place at Mandi. Thereafter the management sent notices to the workman and for not complying with the orders, service of the workman were terminated vide orders in question.

8. So far the rules regarding transfer of employees are concerned. Ex W6 the document filed by the workman are the MINUTES OF MANAGEMENT COMMITTEE MEETING HELD ON 21-06-2006 at headquarter ARTRAC, Shimla. In Clause "D" under the heading Transfer Employees is mentioned as follow :—

"Chairman reiterated that there is no change in transfer policy of employees and status quo to be maintained. However mutual transfer within canteen can be considered at this headquarter."

9. From the perusal of document Ex. W 13 (Rules regulating the terms and conditions of services of civilian employees of Unit Run Canteen paid out of non Public Fund). in para 22 of this letter. Misconduct has been defined. Workman submitted that these rules have not been certified by any enforcement Government agency like labour Department. It is admitted by the witness of the management MW1 Col. R.S. Mehta in cross examination that he don't know whether SOP has been endorsed by enforcement agency like labour department. If the orders of transfer of the workman is not obeyed. that comes within the pervue of misconduct and for misconduct an inquiry has to be conducted by the department wherein the proper procedure was to be followed. Workman also submitted that after the issue of transfer orders. Workman made two representations to the management for consideration and cancellation of his transfer order. The workman further submitted that these two representations still lying undisposed by the management.

In NOVARTIS INDIA LIMITED VERSUS STATE OF WEST BENGAL. AND OTHER (2009)3 Supreme Court Cases 124, Hon'ble Supreme Court has held that Non-joining of service at the transferred place-Dismisal of such employees from services without holding any domestic enquiry/disciplinary proceeding-validity of Held. When an employee does not join at his transferred place. he commits a misconduct-A disciplinary proceeding was therefore required to be initiated in such a case-Hence. the order terminating permanent private servicers of respondents without conducting any enquiry in the said matter was void ab initio.

10. In the present case also workman did not join at Mandi (the transferred place) and thereby committed an alleged misconduct. In these circumstances it was incumbent upon the management to initiate disciplinary proceedings/departmental inquiry by issuing charge sheet and appointing inquiry officer which was not done in the case in hand. Hence the order of termination mentioned above in the present circumstances is declared as unjustified and illegal.

11. As regard the relief is concerned, the workman was working with the management from the year 2002 till his termination and was in regular service. His services were terminated without following the proper procedure and termination order has been declared unjustified and illegal. The workman was transferred and he did not join at the transferred place and after exhausting the legal remedy, it is the case or the workman that he went to join at Mandi but he was not allowed by the management to join and he was informed that his services have already been terminated. In the circumstances the end of justice would be met if the workman is allowed 60% of the back wages.

12. It is pertinent to mention here that the workman was transferred to Mandi. After exhausting all legal remedies, as pleaded by the workman in the claim statement as well in his affidavit. he went to Mandi to join his duty at Mandi (his transferred place) on 30.9.2012 and submitted his joining report on 1.10.2012 but he was not allowed to join his duty by the manager. The transfer order is still valid as not quashed by any authority. Besides this, the transfer order is not the subject matter or the terms of reference. therefore, the workman can be reinstated at Mandi at his transferred place.

13. In view of the above discussion the action of the managing committee of ARTRAC Canteen Shimla in terminating the services of Shri Devki Nan Kalta w.e.f. 30.9.2012/8.1.2013 is unjustified and illegal. The management is directed to reinstate the workman at mandi canteen within one month from the date of the publication of the award alongwith 60% of the back wages. The reference is answered accordingly. Central Govt. be informed

Chandigarh
3.9.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2542.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रसार भारती, आकाशवाणी भागलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 धनबाद के पंचाट (संदर्भ संख्या 48/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/09/2014 को प्राप्त हुआ था।

[सं. एल-42012/64/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th September, 2014

S.O. 2542.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. Ref. No. 48 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Prasar Bharti Corporation of India, Akashwani, Bhagalpur and their workman, which was received by the Central Government on 11/09/2014.

[No. L-42012/64/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/s 10(1) (D) (2A) of
I.D. Act, 1947

Ref. No. 48 of 2008

Employers in relation to the management of Prasar
Bharti Corp. of India, Akashwani, Bhagalpur
AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances

For the Employees : Sri D.K. Sinha
For the Workman : Sri N.N. Choudhary, Rep.
Stat : Bihar Industry : Information and
Broadcasting

Dated 25-08-2014

AWARD

By Order No. L-42012/64/2008-IR (DU), dated 14-10-2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Prasar Bharti Corporation of India, Akashwani, Bhagalpur in terminating the services of Shri Kishore Kumar Singh who was working for longer period and not

regularizing him in service in the post of Production Assistant, is proper I and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of labour & Employment on 20-10-2008. After notice, both parties appeared. The workman files their written statement on 28-01-2009. Thereafter the management files their written statement-cum-rejoinder on 21.01.2010. Rejoinder and document are also filed by the parties. One witness examined on behalf of the management but two witness examined on behalf of the workman. Document marked as Ext. W-1 to W-17 filed by the workman but M-1 to M-4 marked by the management.

3. The short point to be decided in the reference is whether the workman is to be regularized in the post of production Assistant under the management Prasar Bharti, Bhagalpur or not.

4. The management in this written statement submits that the workman does not work 72 days in any calendar year upto 31.12.91. Besides that the workman submits that he is worked with the management as production Assistant more than 72 days in a calendar year, In this regard he filed bunch of document which is marked as W-1 to W-17.

5. The work certificate issued by Prasar Bharti which is marked as W-11 & 12, it appears that the workman is working in the organization as production Assistant which exceed 72 days in a calendar year in 1994 and 1995 respectively. As he is working in the organization over 72 days he be regularize in the service, as per the scheme of prasar Bharti management. To that effect CAT Patna has also given verdict.

6. Considering the facts and circumstance of this case, I hold the action of the management of Prasar Bharti corporation of India, Akashwani, Bhagalpur in terminating the services of Shri Kishore Kumar Singh is not justified. Hence the management is directed to regularize his within one month from the date of publication of award in the Gazette of India, either under him or any Prasar Bharti Kendra.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2543.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रसार भारती, आकाशवाणी भागलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1 धनबाद के पंचाट (संदर्भ संख्या 47/2008) प्रकाशित करती है जो केन्द्रीय सरकार को 11/09/2014 को प्राप्त हुआ था।

[सं. एल-42012/57/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 15th September, 2014

S.O. 2543.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. Ref. No. 47 of 2008) of the Central Government Industrial Tribunal Cum Labour Court No. 1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Prasar Bharti Corporation of India, Akashwani, Bhagalpur and their workman, which was received by the Central Government on 11/09/2014.

[No.L-42012/57/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the matter of reference U/s 10(1) (D) (2A) of
I.D. Act, 1947

Ref. No. 47 of 2008

Employers in relation to the management of Prasar
Bharti Corp. of India, Akashwani, Bhagalpur

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances

For the Employes : Sri D.K. Sinha

For the Workman : Sri N.N. Choudhary, Rep.

State : Bihar

Industry : Information & Broadcasting

Dated : 26-08-2014

AWARD

By Order No. L-42012/57/2008-IR (DU), dated 06-10-2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Prasar Bharti Corporation of India, Akashwani, Bhagalpur in terminating the services of Shri Ashok Kumar Jha without complying Section 23(F) of the I.D. Act and not regularizing him in service the post of Announcer cum-comparer. Is legal and Justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour & Employment on 20-10-2008. After notice, both parties

appeared. The workman files their written statement on 28-01-2009. Thereafter the management files their written statement-cum-rejoinder on 21.01.2010. Rejoinder and document are also filed by the parties. One witness examined on behalf of the management but two witness examined on behalf of the workman. Document marked W-1 to W-5 by the workman but M-1 to M-7 marked by the management.

3. The short point to be decided in the reference is whether the workman is to be regularized in the post of Announcer cum comparer under the management Prasar Bharti, Bhagalpur or not.

4. From Ext. M-3 the form of order of Prasar Bharti it appears that CAT Patna Bench, Patna in O.A. No. 112/2001 directed prasar Bharti to regularize the service of workman in the post of Announcer cum Comparer.

5. Since about 11 years, It appears ridiculous that Prasar Bharti could not get a regular post to regularize the workman, It appears, there is unfair labour practice. In stead of regularizing, the management terminated his job.

6. Considering the facts and circumstance of this case, I hold the action of the management of Prasar Bharti Corporation of India, Akashwani, Bhagalpur in terminating the services of Shri Ashok Kumar Jha without Complying Section 23(F) of the I.D. Act and not regularizing him in service to the post of Announcer cum-comparer is not legal and justified. Hence the management is directed to implement the order of CAT within one month from the date of publication of award in the Gazette and to regularize him as per the dictum of CAT Patna, and this Tribunal, in any Prasar Bharti Kendra.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 15 सितम्बर, 2014

का.आ. 2544.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 257/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-08-2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th September, 2014

S.O. 2544.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.257/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial

dispute between the management of State Bank of India and their workmen, received by the Central Government on 05/08/2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 25th day of June, 2013

INDUSTRIAL DISPUTE L.C. No. 257/2004

Between

Sri T. Saac,
S/o T. Devaiah,
R/o Pramgudipalli Village,
Chinal Irlapudu Post, Kanigiri Mandal,
Prakasam District.

C/o V. R. Aghunath, Advocate,
13/6, P.D. Colony,
Near community Hall,
Dilshuknagar, Hyderabad -60.

.....Petitioner

AND

1. The Assistant General Manager,
Region-I, State Bank of India,
Zonal Office, Tirupathi

2. The Deputy Manager,
State Bank of India,
Zonal Office, Tirupathi.

....Respondents

Appearances:

For the Petitioner : M/s. V. Raghunath,
G. Venkata Reddy &
U.D. Jai Bhima Rao, Advocates

For the Respondent : M/s. B.G. Ravindra Reddy &
B.V. Chandra Sekhar, Advocates

AWARD

This is the petition filed invoking sec.2A(2) of the Industrial Disputes Act, 1947 by the Petitioner who has been working as Assistant, with the state bank of India whose services were since terminated seeking for setting aside the impugned order No.DPC/R-1/019 dated 9.10.2003 of the Disciplinary Authority as confirmed by the order dated 19.4.2004 of the Appellate Authority and to direct the respondents to reinstate the Petitioner/workman into service with back wages and all other consequential benefits from the date of his dismissal from service till retirement and also to grant relief of seniority and other grants to which he is entitled to.

2. The averments made in the petition in brief are as follows:

Petitioner joined the State Bank of India on 11.7.1985 and was promoted as Assistant in 1993. On 3.7.2001 he worked at receipts cash counter at Kanigiri branch of the said bank which falls under small office of Tirupathi A.P.. At about 12.40 hours on that day, he received a phone call from Chennai that his elder son-in-law expired there. He informed of it to the Branch Manager and requested him to make alternative arrangements to relive him from duty so that he could proceed to Chennai along with his family. Branch Manager advised him to complete the day's work and to go as he was not in a position to make alternative arrangements. So he completed the work for that day, tallied the cash and handed over the balance cash to the head cashier and left the place in hurry. While he was waiting for boarding bus, to go to Chennai along with his family at the bus stand a messenger came, in a jeep, belonging to the bank and informed him that he was summoned by the Branch Manager. Then, he advised his family to proceed of the journey and returned to the bank. The Branch Manager there informed him that there was shortage of cash of Rs.21000/- transacted by the Petitioner on that day. Petitioner replied him that he tallied the cash book and handed over the entire balance to the Head Cashier and there was no shortage of cash transacted by him. Then, the Branch Manager asked him for counter keys so as to check it. He handed over the counter keys. Branch Manager proceeded with Head Cashier and accountant and also one Sri K. Brahmaiah, clerk cum cashier. At the time of opening of counter Petitioner was kept away from that scene. There after they informed him that they found Rs.20000/- i.e., two sections of Rs.100/- denominations in the cash counter and demanded him for the balance of Rs.1000/-. Sri K. Brahmaiah gave Rs.1000/- to the Branch Manager. As the Petitioner was kept away from the scene he was unable to know what happened at the counter. No panchanama was conducted and no statements were recorded on that day. A charge memo dated 5.3.2002 was served on the Petitioner on 13.3.2002. His allegations that,

1. Why the Petitioner did not hand over the counter keys on 3.7.2001 to cash office at the time of leaving the office.
2. Petitioner failed to give proper explanation for the shortage of cash which was allegedly found in the counter at 10 PM on 3.7.2001 in the presence of the Branch Manager and custodian? And
3. Petitioner made good Rs.1000/- when questioned by the branch officials about cash shortage.

Petitioner denied the truth of all these allegations by giving his reply Dated 18.3.2002. An enquiry officer

was appointed under letter dated 21.8.2002. Enquiry was conducted on 19.11.2002 and 30.12.2002. Enquiry officer submitted his report on 4.4.2003 to the Disciplinary Authority. Copy of the same was not supplied to the Petitioner before passing final order of punishment. The Disciplinary Authority issued order dated 25.7.2003 proposing punishment of removal from service mechanically and without application of mind. Petitioner was given personal hearing on 29.9.2003. Final orders of punishment 9.10.2002 were served on him. He presented statutory appeal dated 22.11.2003 to the Appellate Authority who rejected the same mechanically by order dated 19.4.2004. The orders of the Disciplinary Authority is highly arbitrary opposite to principles of natural justice, equity and fair play. Punishment awarded is shockingly disproportionate to the alleged misconduct. The enquiry officer's report is perverse and not basing on any legal evidence. It is a cooked up case to make the Petitioner a scape goat to save the influential officers who are responsible for shortage of cash. There are conflicting statements of PWs 1 and 2 as to the persons who were present at the time of opening of the counter of the Petitioner on 3.7.2001. Statements of PW1 to 3 were obtained by the investigating officer after three days after the incident. Statements of two award staff said to be present at that time were not at all obtained and they were not examined as witnesses during enquiry. It is fatal to the case of the respondents. Only the interested witnesses i.e., PW1-1 and 2 were produced by the respondent bank. PWs 2 and 3 were joint custodians of cash charge who are responsible for accounting the cash in cash sheet, where an amount of Rs.21000/- was found to be short by the central office on 3.7.2001 during inspection. As they are responsible for accounting for the shortage of cash in cash chart, PWs 2 and 3 can not act as credible witnesses in the matter. Branch Manager appeared to have tried to save the image of the branch and to save his co-officers by finding the Petitioner as an easy scape goat. The enquiry report given basing on the evidence of such persons is perverse and invalid. There are interpolation of figures made conspicuously in the vault register on 3.7.2001 to cover up the lapses on the part of PWs 2 and 3. The amendment of telegram dated 4.7.2001 which shows an inflated figure of Rs. 21000/- being the amount found in the counter drawer of the Petitioner also is an attempt to cover up the lapse of PWs 2 and 3. PW2 the Head Cashier was having duplicate key of the counter. He might have placed the amount of Rs.20000/- in the cash counter after noticing the shortage by the Central Office. The Inspecting Manager reported that the shortage of Rs. 23000/- was made good. But the correspondence speaks of shortage of Rs. 21000/- only. Bank never followed the procedure for taking acknowledgement of the counter cashier while handing over the balance. The cash said to have been found in the Petitioner's counter

is not produced before the enquiry officer for verification. Petitioner served the bank for 26 years with clean record. Hence, the petition.

3. Respondents filed their counter with averments in brief as follows:

On 3.7.2001 Petitioner left the bank without accounting for the cash transactions made by him and without handing over the entire cash and the keys of the cash counter. It was noticed by the branch functionaries that there was shortage of Rs.21000/- and therefore in the fitness of the things it was decided to search the cash counter which was under the lock and key of the Petitioner. Accordingly Petitioner was summoned and the cash counter was opened with the keys brought by him and the sum of Rs.20000/- was found in it. Petitioner was issued with show cause notice/charge sheet dated 5.3.2002 calling upon him as to why disciplinary action should not be initiated for the irregularities/misconduct reported to have been committed by him. Petitioner denied all the allegations thereon regular domestic enquiry was ordered. The departmental enquiry was conducted in conformity with the principles of natural justice. Petitioner was given full and due opportunity to defend himself. He participated in the enquiry. The enquiry is legal and valid. The enquiry officer submitted his report dated 4.4.2003. His findings are based on record and accepted by the Disciplinary Authority. As per his findings all the charges were proved accordingly Disciplinary Authority inflicted the penalty of removal from service. Petitioner was given personal hearing by the Disciplinary Authority. He did not make out any reasonable valid points for consideration. Thus, Disciplinary Authority confirmed the punishment of removal from service as already proposed, in previous memorandum dated 25.7.2003 vide final order dated 9.10.2003. Petitioner made an appeal to the Appellate Authority/ 2nd respondent after careful examination of the appeal and all relevant records of the case. Appellate Authority confirmed the punishment imposed by the Disciplinary Authority. The allegation that the witnesses examined during domestic enquiry were all interested witnesses and that the Petitioner was made scape goat by the officers are all not correct. Absolutely there is no reason, necessity or motive to make the Petitioner as scape goat. The witnesses examined are competent and direct witnesses to the incident. Their evidence is reliable. There is no necessity to present the cash found in the counter in the same form as departmental enquiry is not a criminal trial. The allegation that award staff was not produced as witnesses and no credible evidence was not on record is not correct. Enquiry is legal and findings of the enquiry officer are based on record. Punishment imposed is commensurate to the misconduct proved in the enquiry. There are no merits in this petition. There are no bonafides in the allegation of the Petitioner. They

are all after thoughts invented for the purpose making over the present case. Respondent is a financial institution and any financial irregularity is detrimental to the very existence of the institution. Respondent bank imposes lots of confidence on its employees while dealing with financial matters. Petitioner has shattered the confidence because of his misconduct. Respondent bank is dealing with public money as custodian of public funds. Any kind of misconduct by its employees by misappropriation or fraud shatters the image of the banking institution and it is highly detrimental to the interest of the organization. Respondent has lost confidence in the Petitioner and he is not entitled to any of the reliefs sought for. Petition is liable to be dismissed.

4. Along with their respective pleadings both parties filed their respective documents which are marked with the consent of counsels. For Petitioner, Ex.W1 to W7 documents viz., copies of charge sheet/show cause notice dated 5.3.2002, reply of Petitioner dated 18.3.2004, Enquiry Officer's report, letter proposing punishment of removal dated 25.7.2003, final order of punishment dated 9.10.2003, appeal to Appellate Authority dated 22.11.2003, order of Appellate Authority dated 19.4.2004 are filed. Whereas respondents have filed the following documents Ex.M1 to M14 viz, copies of memo dated 1.11.2001, suspension order, charge sheet, letters dated 18.3.2002 and 17.2.2003, four proceedings dated 26.4.2002, proceedings dated 25.7.2003, memorandum dated 9.10.2003 enclosing final proceedings, appeal dated 22.11.2003, Appellate Authority's order dated 19.4.2004 and enquiry proceedings. All these documents are perused.

5. During the course of the present case proceedings, petitioner's counsel filed a memo conceding the validity of domestic enquiry. Basing on the same this court held the domestic enquiry in this case as valid by virtue of order dated 19.1.2009.

6. Written arguments were also filed by either party and the same were considered. Heard the arguments of either party.

7. The points that arise for determination are:

1. Whether the impugned order No.DPC/R/-1/019 dated 9.10.2003 of the Disciplinary Authority which was confirmed by the order dated 19.4.2004 by the Appellate Authority are liable to be set aside if so on what grounds?
2. Whether the Petitioner is entitled for the reliefs sought for?

8. Point No(1):

As per the charge sheet the charges levelled against the Petitioner are as follows:

- (a) While handling the receipts cash counter at the branch, on 3.7.2001, Petitioner is alleged to have committed the following irregularities:-
 - (i) Petitioner did not hand over the counter keys on 3.7.2001 to Cash Officer, as was normally done by him, when he left the branch.
 - (ii) Petitioner did not give proper explanation when he was summoned back to the branch along with the cashcounter keys at 10.00 pm on 3.7.2001 and his cash counter drawers were unlocked in the presence of the Branch Manager and joint custodians and an amount of Rs.20,000/- (Rupees Twenty thousand only) in Rs.100/- denomination of 2 sections was found in his cash counter.
 - (iii) Petitioner made good an amount of Rs.1000 when questioned by the branch officials about cash shortage.
- (b) It is alleged that Petitioner's above acts, as mentioned in paragraph(a), would indicate that he had deliberately not brought to the notice of the Cash Officer about the excess cash of Rs.21,000/- received by him along with hand balance in cash balance box with an idea to embezzle the excess cash, so received.

The incident of alleged misconduct has taken place on 3.7.2001 as per the material on record. As on that date, Petitioner who has been working as assistant with the Kanigiri branch of the State Bank of India attended to the work at receipts cash counter and after completing the day's work he tallied the cash and he handed over balance cash to the Head Cashier and left the bank. As far as these aspects are concerned they are not in dispute. It is also an admitted fact by both parties that there after, the Petitioner was called to the bank by sending a messenger and he was asked to hand over his counter keys to the Branch Manager and he handed over the said keys to the Branch Manager at that time.

9. No doubt, admittedly, Petitioner has not handed over his counter keys while handing over balance cash after tallying the cash to the Head cashier, as he was supposed to do and kept the counter keys with him. The first part of the charge(a) leveled against him has been that he did not hand over the counter keys on 3.7.2001 to cash office while leaving the office. As to this charge is concerned Petitioner can not deny the irregularity committed by him in not handing over the counter keys to the Head Cashier. In this regard, it is the contention of the Petitioner in his petition that nothing prevented the authorities to open his counter with duplicate keys available with the Head Cashier. For this contention, respondents have not given any reply. A careful perusal of the domestic enquiry proceedings do not reveal that at

any point of time Petitioner has pointed out this aspect during domestic enquiry. Therefore, much credence need not be given to this contention raised by the Petitioner. Thus, it can safely be held that as far as the first part of charge(a), levied against the Petitioner is concerned, it is a proved irregularity on his part.

10. As far as the second part of charge(a) is concerned, it reads as follows:

“Petitioner failed to give proper explanation for the shortage of cash which was allegedly found in the counter at 10 PM on 3.7.2001 in the presence of the Branch Manager and custodian”.

The facts of the incident are to be gathered from the contentions and counter contentions of either party and the enquiry proceedings placed before the court.

11. It is the contention of the Petitioner that on 3.7.2001 while he was attending to his duties he received telephonic information that his elder son in law expired in Chennai and asked for relieving him from duties by making alternative arrangements, but as he could not be relieved from duty as alternative arrangements could not be made, he continued the day's work, completed it, tallied the cash and handed over the balance cash to the Head Cashier and left the Bank in hurry, to proceed to Chennai along with his family. He further contended that while he was waiting for the bus to travel to Chennai along with his family a messenger from the bank came there by a jeep, and told him that he was summoned by the Branch Manager and thus, he proceeded to the bank telling the members of his family to proceed with their journey, and he would join them later. He further claimed that the Branch Manager, who was in the bank asked him for the counter keys and when he handed over the keys, the said Branch Manager together with others went to the Petitioner's counter but, keeping him away from that place and sometime later they returned to him and informed him that Rs. 20000 cash was found in his counter, but, no panchanama proceedings were conducted at that time and he does not know how and in whose presence the cash was found in his counter. Respondents have not denied the truth of these specific allegations made by the Petitioner.

12. Evidently, the Petitioner's counter was not searched in his presence, though he was very much available there. No panchanama proceedings were conducted. As rightly pointed out by the Petitioner, statements of the witnesses were not recorded at that time. Record shows that three days later statements of the workman were recorded. When serious allegation of embezzlement of money is being made conducting panchanama in the presence of the alleged workman done and prompt recording of the statement of witnesses are the fundamental proceedings/

precautions to be taken up by anybody, especially the officers who are conducting the proceedings of search and seizure. Non- conducting of these proceedings certainly gives raise to prejudice to the interests of the Petitioner. Another important aspect to be noted is that joint-custodians formed part of the search and seizure party.

13. Further more, as can be seen from the evidence of Sri Ch. Chalapathi Rao, who has been working as officiating accountant of the Kanigiri branch of the state Bank of India and who deposed as PW3 during the enquiry proceedings, he was the person who maintained the vault register which contains the entries regarding withdrawals and deposits of the hard cash into the vault of the bank. On 3.7.2001 the officials of the central office of the bank have inspected Kanigiri branch and found that the vault register does not bear the withdrawal entry and handing over of cash of Rs. 21000 and also found that there is shortage of the cash of Rs. 21000 in the cash chest. PW2 Sri P.C. Peddanna the then cash officer of the Kanigiri branch of the State Bank of India has categorically deposed during the enquiry that he handed over the cash to Payment Cashier and handed over the hard balance box, to the Petitioner herein and that the amount of Rs. 21000 was not entered into the vault register. Thus, the evidence of PWs 2 as well as 3 clearly shows that there was no entry in the vault register which can show that the amount of Rs. 21000 was actually handed over to the Petitioner by the cash officer. The evidence of PWs 2 and 3 is therefore to the effect that PW2 is the person who handed over the hard cash box to the Petitioner and PW3 is the person who has to maintain the vault register. They both are responsible for proper maintenance of cash account. But, there is no account regarding the amount of Rs. 21000 maintained on 3/7/2001 prior to the inspection of the branch. For this, the explanation given is that PW3 has forgotten to maintain the register. That means there is no specific record to show that the Petitioner was entrusted with the missing amount of Rs. 21000 by PW2 on 3.7.2001.

14. Further, as can be seen from the evidence gathered on record during domestic enquiry, after the missing cash was recovered, withdrawal entry as well as deposit entry were made in the vault register on 3.7.2001 and at that time the amount recovered has been mentioned as “Rs. 23000”. PWs 2 and 3 both have spoken so while they were under cross examination. The said entry stands as Rs. 23000 only. Thus, as per the said entry it has been stated in the vault register an amount of Rs. 23000 was deposited. Whereas, as per the evidence on record Rs. 20000 was recovered from the counter of the Petitioner and Rs. 1000 was recovered from him. Then where from the remaining amount of Rs. 2000 has come,

is a question which remained unanswered. Further all these discrepancies throw reasonable doubt on the very proceedings itself.

15. The evidence on record is further disclosing that as on 3.7.2001 the laid down procedure for handling of hard cash was not being followed in Kanigiri branch. The joint custodians of the cash have not at all followed the required procedure while handling the cash, as can be seen from the evidence on record. PW1 the then branch manager, of Kanigiri branch has stated that it is not intentional on the part of the joint custodians, in not entering the withdrawal of the amount of Rs. 21000 during the morning of 3.7.2001 in the vault register. The material on record does not give out the reason why he could come to such an understanding.

16. The above discussed evidence clearly shows that the evidence of the joint custodians of the cash in the given branch on the day of incident, one among whom is the person who failed to make relevant entries in the vault register, formed the basis for the findings in the enquiry report. Such report has been accepted by the Disciplinary Authority totally and he proposed for awarding the punishment of removal of the Petitioner from service.

17. One important aspect to be noted is that before accepting the finding of the Enquiry Officer, the Disciplinary Authority has not afforded any opportunity to the Petitioner to say his contentions/comments regarding the various findings in the enquiry report by supplying a copy of the same, together with the enquiry proceedings, to the Petitioner. After receiving the enquiry report, the Disciplinary Authority straight away proceeded to propose punishment to be awarded to the Petitioner and issued show cause notice to him, asking him why such punishment shall not be awarded to him. No doubt Petitioner has been afforded a personal hearing after issuing such show cause notice. But that personal hearing was confined to the quantum of punishment to be awarded only. Thus, an opportunity to dispute with and explain regarding the various findings of the enquiry officer in the light of the evidence adduced on record during domestic enquiry, has been denied to the Petitioner by the Disciplinary Authority before considering the findings of the enquiry officer. Thus, it can reasonably be held that unilaterally the Disciplinary Authority has considered the enquiry report and accepted the same without giving any opportunity to the Petitioner. This is one other strong ground being pleaded by the Petitioner to consider the proceedings of the Disciplinary Authority as arbitrary and unjust. This ground is well founded and is acceptable.

18. In view of fore gone discussion of the material on record it can clearly be seen that finding fault with the Petitioner stating that he failed to give explanation for the

shortage of cash, which was allegedly found in his counter at 10PM on 3.7.2001 in the presence of Branch Manager and Joint custodians can not be accepted as proper and just. The very finding of such cash in the counter of the Petitioner is to be viewed with doubt, in view of the circumstances of finding of such cash and the manner in which the same was found. As already discussed above, the evidence shows that the other joint custodians of the cash have become party to the search party. PW1 the Branch Manager has categorically admitted that there was lapse on the part of the joint custodians in handling the cash on 2.7.2001 and 3.7.2001. Further as already observed above, the alleged search and seizure has taken place not in the presence of the Petitioner. He was kept away from the scene of search and seizure, though he was very much available in the premises. Further no panchanama has been conducted. Further more, the making good the amount of Rs.1000 by one Brahmaiah the joint custodian on behalf of the Petitioner will not be sufficient proof of Petitioner's guilt.

19. The other charge leveled against the Petitioner has been that he made good Rs.1000 when questioned by the bank officials about cash shortage. As to this aspect is concerned it is the claim of the Petitioner that he was in distress mood at that time and when he was asked to make good of the amount of Rs.1000 his colleague Mr. Brahmaiah has handed over an amount of Rs.1000 to the authorities. As can be seen from the evidence of the PW2 Brahmaiah is the person who opened the counter of the Petitioner when the amount of Rs.20000 was said to be found in it. The evidence of PW3 indicates that Sri Brahmaiah the clerk cum cashier of the branch alone has given a section of Rs.10 which amounts to Rs.1000 for making good the missing amount when Petitioner could not bring such section of the amount.

20. Whereas it is the contention of the respondents that as there was no reluctance on the part of the Petitioner in making good the missing amount of Rs.1000/- he was found to be guilty of misappropriation of that amount. But the evidence on record shows that Brahmaiah is the person who supplied money for making good the missing money on behalf of the Petitioner to the bank. Thus, just because that amount has been made good in such manner, it can not be said that Petitioner has accepted his guilt. Thus, the findings of Enquiry Officer on all the three sections of charge (a) are not acceptable. Answer to charge (b) is nothing but consequential to the answer arrived at for charge (a). Thus, the action on the part of the Disciplinary Authority in accepting the finding of the Enquiry Officer that too, without even giving opportunity to Petitioner to comment upon the enquiry proceedings and enquiry findings, is certainly to be held as unjust, arbitrary and illegal.

21. In view of the fore gone discussion of the material on record it can safely be concluded that the proceedings of the Disciplinary Authority in this case which were confirmed by the Appellate Authority are arbitrary, unjust, and are liable to be set aside.

This point is answered accordingly.

22. **Point No.II :** In view of the finding given in Point No.(I) above, the impugned order No. No.DPC/R-1/019 dated 9.10.2003 which was confirmed by the order dated 19.4.2004 of the Appellate Authority are liable to be set aside.

23. No doubt, the bank of the respondents being a public financial institution which handles public money as custodian of public funds must deal very strictly with the erring employees who shattered the faith of the bank in them. But, the said employees are human beings who are entitled to lead their lives with all pride and respect. Being citizens of India they are entitled for fair and proper treatment and also the benefits of principles of natural justice. The Disciplinary Authority, while dealing with the incidents of this nature must not blindly accept the findings of the enquiry officer. He has to verify the evidence adduced on record during domestic enquiry with open mind, give full opportunity to the charged employee to explain the circumstances and then come to reasonable conclusion. In the present case, the only irregularity which appear to have been proved beyond reasonable doubt is, the failure on the part of the Petitioner in handing over the keys of the cash counter to the cash officer. As to the other aspects are concerned one can clearly see that the entire bunch of the joint custodians are responsible for the lapses and irregularities in handling of the cash on the given dates. There is no proper proof as to the availability of cash in the counter of Petitioner, as there was no panchanama conducted regarding search and seizure and as the search was not conducted in the presence of the Petitioner, though he was very much available on the spot. These facts were discussed in detail while deciding Point No.(I). Thus, if at all Petitioner is to be awarded with punishment, it would be for the irregularity of his not handing over the keys of the cash counter to his higher up while leaving the office. This is a very minor irregularity and for that a warning to him to be careful in future is suffice.

24. Thus, the punishment awarded by the Disciplinary Authority to the Petitioner is totally unwarranted and is liable to be set aside. Thus, Petitioner is to be ordered to be reinstated into service forthwith. Considering the circumstances of the case, Petitioner is entitled for full back wages due to him from the date of his removal from service 9.10.2003 till the date of his reinstatement. Petitioner shall be entitled for all other attendant benefits also.

This point is answered accordingly.

RESULT

25. In the result, Petition is allowed. The impugned proceedings of the Disciplinary Authority / first respondent No.DPC/R-1/019 dated 9.10.2003 which was confirmed by the Appellate Authority/the 2nd respondent by the proceedings No.PER & HRD/9-152 dated 19.4.2004 are declared as illegal, arbitrary and are hereby set aside. The Petitioner shall be reinstated into service forth with. He is entitled for full back wages from the date of his removal from service i.e., 9.10.2003 till the date of his reinstatement. He is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

Ex.W1:	Photostat copy of memorandum No.DPC/R-1/019 dated 9.10.2003
Ex.W2:	Photostat copy of reply of Petitioner dated 18.3.2004
Ex.W3:	Photostat copy enquiry report
Ex.W4:	Photostat copy of memorandum No.DPC/R-1/012 dated 25.7.2003
Ex.W5:	Photostat copy of final order of punishment dated 9.10.2003
Ex.W6:	Photostat copy of appeal before Appellate Authority dated 22.11.2003
Ex.W7:	Photostat copy of order of Appellate Authority dated 19.4.2004

Documents marked for the Respondent

Ex.M1:	Office copy of memo. No. DPC/R-I/011, dated 1.11.2001
Ex.M2:	Office copy of memo. No. DPC/R-I/012, dated 1.11.2001
Ex.M3:	Office copy of memo. No. DPC/R-I/019, dated 5.3.2002
Ex.M4:	Photostat copy of representation of explanation of Petitioner dated 18.3.2002
Ex.M5:	Office copy of lr. dated 17.2.2003
Ex.M6:	Office copy lr.. No. DPC/R-I/001, dated 26.4.2002
Ex.M7:	Office copy of lr. No. DPC/R-I/002, dated 26.4.2002

- Ex.M8: Office copy of Ir. No. DPC/R-I/003, dated 26.4.2002
- Ex.M9: Office copy of Ir. No. DPC/R-I/004, dated 26.4.2002
- Ex.M10: Office copy of Ir. No. DPC/R-I/013, dated 25.7.2003
- Ex.M11: Office copy of memo. No. DPC/R-I/018, dated 9.10.03
- Ex.M12: Representation of Petitioner to Appellate Authority dated 22.11.2003
- Ex.M13: Office copy of order No. Per & HRD/9-152 dated 19.4.2004
- Ex.M14: Office copy of order No. Per & HRD/9-153 dated 19.4.2004

नई दिल्ली, 16 सितम्बर, 2014

का.आ. 2545.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 236/92) को प्रकाशित करती है जो केन्द्रीय सरकार को 09-09-2014 को प्राप्त हुआ था।

[सं. एल-12012/186/92-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 16th September, 2014

S.O. 2545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 236/92) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 09/09/2014.

[No. L-12012/186/92-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/236/92

PRESIDING OFFICER : SHRIR. B. PATLE

Shri S.Z. Yezdan,
181/5, Ram Ward,
Kandeli,
Narsinghpur

.....Workman

Versus

The chief General Manager,
State Bank of India,
Local Head Office,
Hoshangabad Road, Bhopal

The Regional Manager,
State Bank of India,
Regional office,
Region-I, Shankar Nagar,
Raipur

.....Management

AWARD

Passed on this 31st day of July, 2014

1. As per letter dated 8-12-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/186/92-IR(B-3). The dispute under reference relates to:

“Whether the action of the management of State Bank of India in dismissing Shri S.Z. Yezdan from service w.e.f. 20-4-91 is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to parties. Workman filed statement of claim at Page 8/1 to 8/7. Case of workman is that he was prosecuted for offence under Section 294, 332 of IPC. He was convicted on 23-10-86. In appeal Session Judge found incident unfortunate. He was acquitted of the offence under Section 294, 332 of IPC. However his conviction under offence 323 was maintained. That he was extended benefit of provision of Probation Offenders Act. His application for reinstatement was rejected. Management issued charge sheet to him on 25-5-89. Workman submits that management was not authorized to reopen issue after judgment in appeal by Sessions Court. The enquiry was empty formality. The workman submits that charge sheet issued to him is not legal. DE was not properly conducted. He was not given opportunity to cross-examine witnesses of the management. On such ground, workman prays for his reinstatement with back wages.

3. IInd party filed Written Statement at page 9/1 to 9/8. Management submits that on complaint of Branch Manager Shri R.C. Chhabaria, a criminal case was prosecuted against workman for offence under Section 332 and 293 of IPC. Workman was found guilty and convicted in appeal. The conviction of offence under Section 323 of IPC was maintained. It is reiterated that charge sheet issued to workman is legal. Workman had abused and assaulted Branch Manager. The enquiry was properly conducted by Enquiry Officer Dubey. The misconduct of workman is proved. The dismissal of workman is proper. The appeal preferred by workman was

rejected. On such ground, IInd party prays for rejection of claim.

4. Vide order dated 12-6-2013, enquiry conducted against workman was found proper and legal. Considering pleadings and order passed on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) “Whether the action of the management of State Bank of India in dismissing Shri S.Z.Yezdan from service w.e.f. 20-4-91 is justified?” | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

5. As discussed above enquiry conducted against workman is found legal and proper. Workman has not adduced evidence on other issues. Management’s witness filed affidavit of his evidence stating that workman was convicted for offence under Section 323 of IPC by Sessions court in appeal. The evidence of management’s witness remained unchallenged. The record of Enquiry Proceedings at Page 10/32 to 10/48 shows that workman had assaulted Branch Manager Shri R.C.Chhabaria. The findings of Enquiry officer are supported by evidence of management’s witnesses. The misconduct alleged against workman is proved from Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Affirmative.

6. Workman is dismissed from service for assaulting Branch Manager Shri R.C.Chhabaria. workman was convicted for offence under Section 323 of IPC. He was extended benefit of benefit of provision of Probation Offenders Act. The proved misconduct of accused causing hurt to the Branch Manager is serious misconduct. Therefore the punishment of dismissal cannot be said improper, disproportionate. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India in dismissing Shri S.Z.Yezdan from service w.e.f. 20-4-91 is proper and legal.
- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 सितम्बर, 2014

का.आ. 2546.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 243/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-09-2014 को प्राप्त हुआ था।

[सं. एल-41012/128/92-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 16th September, 2014

S.O. 2546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 243/93) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 09/09/2014

[No. L-41012/128/92-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/243/93

PRESIDING OFFICER : SHRIR.B.PATLE

Shri Mohan,
S/o Shri Ramcharan,
Near shiv Mandir,
12 Block, Rly Colony,
Harda (MP)

...Workman

Versus

Chief Health Inspector,
Central Railway,
Itarsi

PWI(S),
Central Railway,
Harda (MP)

...Management

AWARD

Passed on this 19th day of August, 2014

1. As per letter dated 7-12-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/128/92-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, Central Railway, Bhopal in terminating the services of Shri Mohan, S/o Shri Ramcharan, Safaiwala w.e.f. 1-10-87 is justified? If not, what relief the workman concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was engaged as sweeper by Station Master from 2nd June 1980. He was working at Charkheda Loco Foreman Itiarsi till October 1987. He had worked with devotion. Certificate about his working was issued on 26-2-81 by Foreman Harda. As per letter dated 12-3-81, workman was directed to work with AEN, Khandwa. Service card was not issued to him despite of repeated correspondence. That certificate about working for 232 days was issued by the authority that he was continuously working from 2-6-90 to 1-10-87 for 8 years. He completed 240 days continuous service. His services were discontinued without notice or conducting any enquiry in violation of the law. He raised dispute between ALC, Bhopal. Failure report was submitted to Government. The dispute is referred by Govt. workman submits that he is illegally terminated by IInd party. Workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at page 6/1 to 6/2. IInd party submits that workman be put to strictly prove his contentions. All material contentions of workman are denied. It is denied that workman was promoted in violation of provisions of I.D.Act. The dispute raised after delay is not tenable. IInd party prayed for rejection of claim.

4. Workman filed rejoinder at page 7/1 to 7/3 reiterating his contentions in statement of claim. Workman submits that he had filed original application 49/90 before CAT, Jabalpur. IInd party had denied his contentions in statement of claim without reasons. Workman denies that dispute is raised after delay.

5. After amendment in statement of claim, IInd party filed additional Written Statement contenting that workman himself left services. There was no question of paying retrenchment compensation.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---|
| (i) “Whether the action of the management of Divisional Railway Manager, Central Railway, Bhopal in terminating the services of Shri Mohan, S/o Shri Ramcharan, Safaiwala w.e.f. 1-10-87 is justified?” | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to relief claimed by him. |

REASONS

7. Workman is challenging termination of his service for violation of provisions of I.D.Act. His services were terminated without notice, no retrenchment compensation was paid to him. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That he failed to appear for his cross-examination therefore his evidence cannot be considered. As the claim of workman is not supported by cogent evidence, action of the management cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Divisional Railway Manager, Central Railway, Bhopal in terminating the services of Shri Mohan, S/o Shri Ramcharan, Safaiwala w.e.f. 1-10-87 is legal and proper.
- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer